

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<p><b>Orbit Licensing LLC,</b>  Plaintiff,  v.  <b>Limelight Networks, Inc.,</b>  Defendant.</p>	<p>Case No. 21-948-LPS  Patent Case  Jury Trial Demanded</p>
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**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Orbit Licensing LLC (“Plaintiff”), through its attorneys, complains of Limelight Networks, Inc. (“Defendant”), and alleges the following:

**PARTIES**

1. Plaintiff Orbit Licensing LLC is a company established in Texas with its principal place of business at 15922 Eldorado Pkwy, Suite 500-1679, Frisco, TX 75035.
2. Defendant Limelight Networks, Inc. is a corporation organized and existing under the laws of Delaware that maintains an established place of business at 1465 N Scottsdale Road, Suite 400, Scottsdale, AZ 85257, United States. Defendant can be served through its registered agent, The Corporation Trust Company, at 1209 Orange St., Wilmington, DE 19801.

**JURISDICTION**

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.
4. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because it has engaged in systematic and continuous business activities in this District and is incorporated in this District's state. As described below, Defendant has committed acts of patent infringement giving rise to this action within this District.

#### **VENUE**

6. Venue is proper in this District under 28 U.S.C. § 1400(b) because Defendant has committed acts of patent infringement in this District and is incorporated in this District's state.

#### **PATENTS-IN-SUIT**

7. Plaintiff is the assignee of all right, title and interest in United States Patent Nos. 9,497,035 (the "'035 Patent") and 9,578,040 (the "'040 Patent") (collectively "the Patents-in-Suit"); including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Patents-in-Suit. Accordingly, Plaintiff possesses the exclusive right and standing to prosecute the present action for infringement of the Patents-in-Suit by Defendant.

#### **THE '035 PATENT**

8. The '035 Patent is entitled "Method, Device, and System for Playing Media Based on P2P," and issued on November 15, 2016. A true and correct copy of the '035 Patent is attached hereto as Exhibit 1 and incorporated herein by reference.

9. The '035 Patent is valid and enforceable.

10. Plaintiff is the owner of the '035 Patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '035 patent against infringers, and to collect damages for all relevant times.

11. The '035 Patent claims an inventive and computer centric concept that relates to the field of multimedia transmission, and more particularly to a method, device and system for playing media based on P2P (peer-to-peer). Ex. 1 at 1:15-17.

12. More specifically, the '035 Patent is directed to a P2P based method for playing media capable of interfusing a live broadcasting service and a video-on-demand video service and realizing a free switch between the two play modes. *Id.* at 1:66-67, 2:1-3.

13. The '035 Patent solves multiple computer centric problems that existed with prior art. These problems included: (1) The functions of the live broadcasting and the video-on-demand in the P2P based video service system are independently realized, and the two play manners are not interfused, such that the two manners respectively have some problems. (2) The living broadcasting program is smooth and clear, but cannot be dragged; and the video-on-demand program satisfies the desire of the user of playing the program at any moment, but the user needs to query the relevant program, such that a drag delay is large with a long buffer time, and a program smoothness needs to be improved. (3) Further, each terminal node has one disk configured to buffer the data already viewed by the user, but the buffered data is not fully utilized. *Id.* at 1:49-62.

14. The '035 Patents solves these problems by implementing a request routing system (RRS) wherein the user management module is configured to manage topology structure information of live broadcasting and video-on-demand in the system and the server management module is configured to manage information of each edge server. *Id.* at 37-47.

15. This solution is depicted in figure 9 of the '035 Patent.

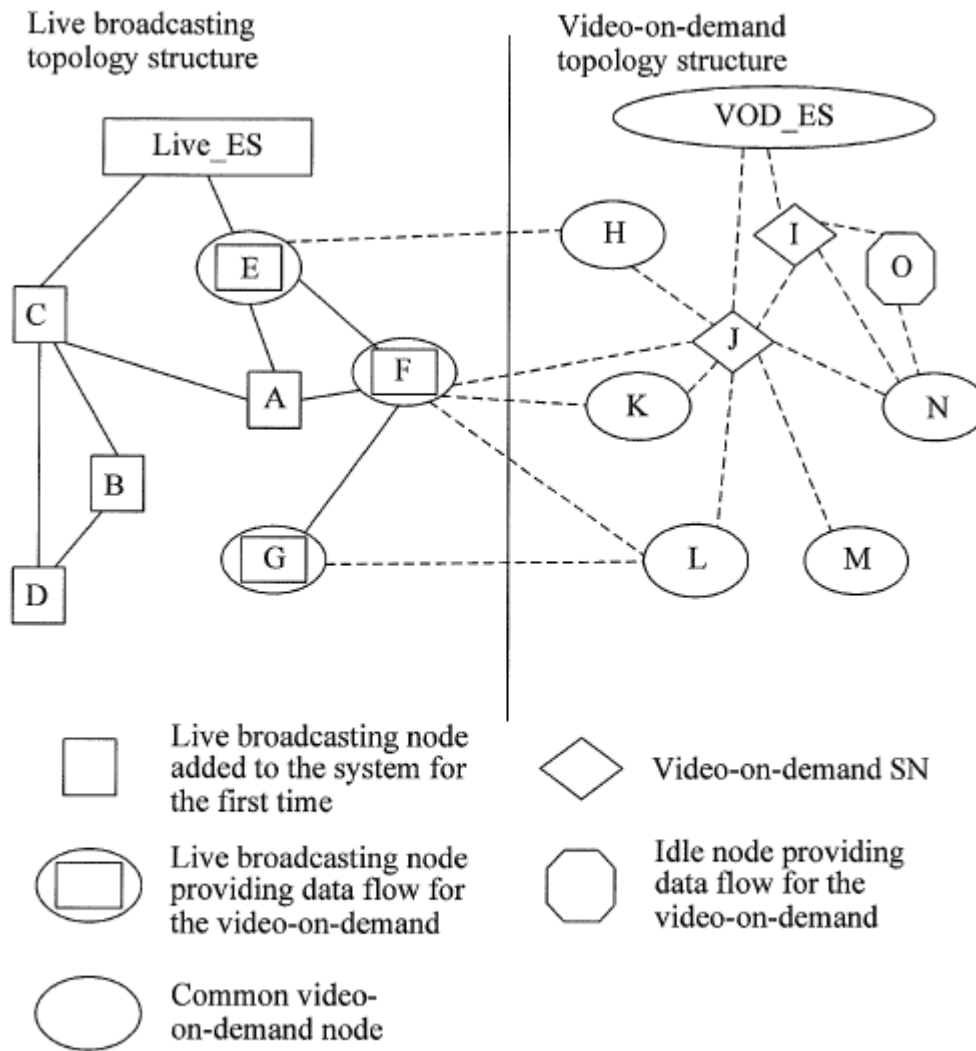


FIG. 9

16. The technical solutions of the embodiments of the '035 Patent include: By fully utilizing characteristics of the live broadcasting service and the video-on-demand video service, the live broadcasting and video-on-demand video service can be interfused to realize a free switch from the live broadcasting to the video-on-demand. Meanwhile, a disk buffer method is

improved. Such that program sources may be uniformly distributed and connectable nodes are increased, and the data buffered in user node disks is applied to the video-on demand. In addition, according to a source distribution condition, the system judges whether to buffer the currently viewed program, such that sufficient contents are ensured to be used for network applications, thus avoiding waste caused by the over much content stored repeatedly, increasing the utilization ratio of network resources, and improving the use experience of users. *Id.* at 3:51-67.

17. The '035 Patent is thus inventive, not-abstract, and patent eligible under 35 U.S.C. §101.

#### **THE '040 PATENT**

18. The '040 Patent is entitled "Packet Receiving Method, Deep Packet Inspection Device and System," and issued on February 21, 2017. A true and correct copy of the '040 Patent is attached hereto as Exhibit 2 and incorporated herein by reference.

19. The '040 Patent is valid and enforceable.

20. Plaintiff is the owner of the '040 Patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '040 patent against infringers, and to collect damages for all relevant times.

21. The '040 Patent claims an inventive and computer centric concept that relates to the field of communications and, more particularly, to a packet receiving method, a deep packet inspection device and system.

22. Embodiments of the present invention provide a packet receiving method, a deep packet inspection device and system, which can improve the capability for identifying the

packet of the deep packet inspection device, and prevent occurrence of bugs caused by insufficient identification. Ex. B at 1:52-56.

23. One embodiment of the '040 is shown below.

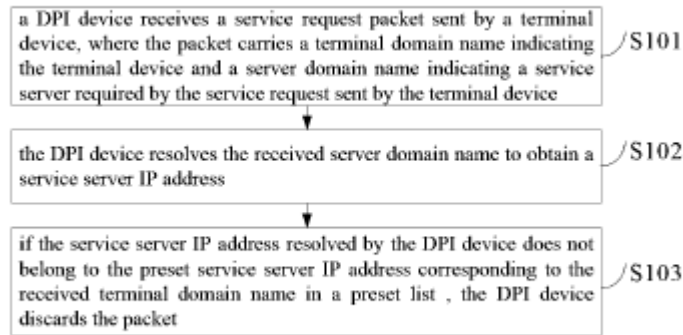


FIG. 1

24. The '040 Patent solved the computer centric problem of users being able to access websites that require a monetary subscription by altering the host field. The '040 Patent solves this problem by using a deep packet inspector device to inspect packet information prior to allowing access to a service server. If the deep packet inspector detects information in a user's packet request that does not match an authorized user's account, it will discard the packet and the user will not gain access.

25. The '040 Patent is thus inventive, not-abstract, and patent eligible under 35 U.S.C. §101.

**COUNT 1: INFRINGEMENT OF THE '035 PATENT**

26. Plaintiff incorporates the above paragraphs herein by reference.

27. **Direct Infringement.** Defendant has directly infringed, literally or by the doctrine of equivalents, at least claim 16 of the '035 Patent (the "Exemplary '035 Patent Claim") in at least this District by having made, used, offered to sell, sold and/or imported, without limitation, the Video Delivery platform (the "Exemplary Defendant Product") advertised on its website <https://www.limelight.com/products/video-delivery/>. On information and belief, other services that infringe the claims of the '035 Patent have been made, used, sold, imported, and offered for sale by Defendant and/or its customers.

28. Defendant also has directly infringed, literally or under the doctrine of equivalents, the Exemplary '035 Patent Claim, by having its employees internally test and use these Exemplary Products.

29. Exhibit 3 includes charts comparing the Exemplary '035 Patent Claim to the Exemplary Defendant Product. As set forth in these charts, the Exemplary Defendant Product practice the technology claimed by the '035 Patent. Defendant's Video Delivery Network offers both live videos and on demand videos that originate from different root nodes in a topology structure that operates in an infringing manner as demonstrated by Exhibit 3. Accordingly, the Exemplary Defendant Product incorporated in these charts satisfy all elements of the Exemplary '035 Patent Claim.

30. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit 3.

31. Plaintiff is entitled to recover damages adequate to compensate for Defendants infringement.

32. **Induced Infringement.** Upon information and belief, Defendant actively, knowingly, and intentionally has been and continues to induce infringement of the '035 Patent,

literally or by the doctrine of equivalents, by selling Exemplary Defendant Product to their customers for use in end-user products in a manner that infringes one or more claims of the ‘035 Patent.

33. **Contributory Infringement.** Defendant actively, knowingly, and intentionally has been and continues materially contribute to their own customers’ infringement of the ‘035 Patent, literally or by the doctrine of equivalents, by selling Exemplary Defendant Product to their customers for use in end-user products in a manner that infringes one or more claims of the ‘035 Patent. Moreover, the Exemplary Defendant Product is not a staple article of commerce suitable for substantial noninfringing use. *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).

34. Defendants had knowledge that third parties, such as their customers, would infringe for a variety of reasons, such as the following:

- a. By including in the Exemplary Product a component that can only infringe, the inference that infringement is intended is unavoidable and sufficient to satisfy the knowledge element of contributory infringement. *See Motiva Patents, LLC v. Sony Corp.*, 408 F. Supp. 3d 819 (E.D. Tex. 2019); *see also Ricoh Co. v. Quanta Computer Inc.*, 550 F.3d 1325, 1338 (Fed. Cir. 2008).
- b. On information and belief, in conducting prior art searches and freedom to operate analyses, Defendant became apprised of the ‘035 Patent.
- c. To the extent defendants argue they were not aware of the ‘035 Patent, defendants



were willfully blind, which is alone sufficient to impute knowledge for contributory infringement, even in the absence of actual knowledge. *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, 824 F.3d 1344, 1347 (Fed. Cir. 2016).

35. Exhibit 3 includes charts comparing the Exemplary '035 Patent Claims to the Exemplary Defendant Product. As set forth in these charts, the Exemplary Defendant Products practice the technology claimed by the '035 Patent. Accordingly, the Exemplary Defendant Product incorporated in these charts satisfy all elements of the Exemplary '035 Patent Claims.

36. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit 3.

37. Plaintiff is entitled to recover damages adequate to compensate for Defendant's infringement.

## **COUNT 2: INFRINGEMENT OF THE '040 PATENT**

38. Plaintiff incorporates the above paragraphs herein by reference.

39. **Direct Infringement.** Defendant has directly infringed at least claim 1 of the '040 Patent in at least this District by having made, used, offered to sell, sold and/or imported, without limitation, at least the <https://www.limelight.com/> website (the "Exemplary Defendant Product") that infringe at least claim 1 of the '040 Patent also identified in the charts incorporated into this Count below (the "Exemplary '040 Patent Claim") literally or by the doctrine of equivalents. On information and belief, numerous other services that infringe the claims of the '040 Patent have been made, used, sold, imported, and offered for sale by Defendant and/or its customers.

40. Defendant also has and continues to directly infringe, literally or under the doctrine of equivalents, the Exemplary '040 Patent Claim, by having its employees internally test and use these Exemplary Products.

41. Exhibit 4 includes charts comparing the Exemplary '040 Patent Claim to the Exemplary Defendant Product. As set forth in these charts, the Exemplary Defendant Product practice the technology claimed by the '040 Patent. Defendant's website utilizes Sender Policy Framework (SPF) protocol. SPF protocol is a packet receiving method that infringes the '040 Patent as shown in Exhibit 4. Accordingly, the Exemplary Defendant Product incorporated in these charts satisfy all elements of the Exemplary '040 Patent Claim.

42. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit 4.

43. Plaintiff is entitled to recover damages adequate to compensate for Defendants infringement.

44. **Induced Infringement.** Upon information and belief, Defendant actively, knowingly, and intentionally has been and continues to induce infringement of the '040 Patent, literally or by the doctrine of equivalents, by selling Exemplary Defendant Product to their customers for use in end-user products in a manner that infringes one or more claims of the '040 Patent.

45. **Contributory Infringement.** Defendant actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '040 Patent, literally or by the doctrine of equivalents, by selling the Exemplary Defendant Product to their customers for use in end-user products in a manner that infringes one or more claims of the '040 Patent. Moreover, the Exemplary Defendant Product is not a staple article of

commerce suitable for substantial noninfringing use. *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).

46. Defendants had knowledge that third parties, such as their customers, would infringe for a variety of reasons, such as the following:

- a. By including in the Exemplary Product a component that can only infringe, the inference that infringement is intended is unavoidable and sufficient to satisfy the knowledge element of contributory infringement. *See Motiva Patents, LLC v. Sony Corp.*, 408 F. Supp. 3d 819 (E.D. Tex. 2019); *see also Ricoh Co. v. Quanta Computer Inc.*, 550 F.3d 1325, 1338 (Fed. Cir. 2008).
- b. On information and belief, in conducting prior art searches and freedom to operate analyses, Defendant became apprised of the ‘040 Patent.
- c. To the extent defendants argue they were not aware of the ‘040 Patent, defendants were willfully blind, which is alone sufficient to impute knowledge for contributory infringement, even in the absence of actual knowledge. *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, 824 F.3d 1344, 1347 (Fed. Cir. 2016).

47. Exhibit 3 includes charts comparing the Exemplary ‘040 Patent Claim to the Exemplary Defendant Product. As set forth in these charts, the Exemplary Defendant Product practices the technology claimed by the ‘040 Patent. Accordingly, the Exemplary Defendant Product incorporated in these charts satisfy all elements of the Exemplary ‘040 Patent Claims.

48. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit 4.

49. Plaintiff is entitled to recover damages adequate to compensate for Defendant's infringement.

**JURY DEMAND**

50. Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. A judgment that the '035 Patent is valid and enforceable
- B. A judgment that the '040 Patent is valid and enforceable
- C. A judgment that Defendant has infringed directly and indirectly one or more claims of the '035 Patent;
- D. A judgment that Defendant has infringed directly and indirectly one or more claims of the '040 Patent;
- E. An accounting of all damages not presented at trial;
- F. A judgment that awards Plaintiff all appropriate damages under 35 U.S.C. § 284 for Defendants past infringement with respect to the '035 Patent.
- G. A judgment that awards Plaintiff all appropriate damages under 35 U.S.C. § 284 for Defendants past infringement with respect to the '040 Patent.
- H. And, if necessary, to adequately compensate Plaintiff for Defendants infringement, an accounting:

- i. that this case be declared exceptional within the meaning of 35 U.S.C. § 285 and that Plaintiff be awarded its reasonable attorneys fees against Defendant that it incurs in prosecuting this action;
- ii. that Plaintiff be awarded costs, and expenses that it incurs in prosecuting this action; and
- iii. that Plaintiff be awarded such further relief at law or in equity as the Court deems just and proper.

Dated: October 22, 2021

Respectfully submitted,

/s/ David deBruin

David deBruin

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