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24 **UNITED STATES DISTRICT COURT**
25 **CENTRAL DISTRICT OF CALIFORNIA**

26 AKAMAI TECHNOLOGIES, INC.,
27 Plaintiff,

28 v.

MEDIAPOINTE, INC. and AMHC, Inc.
Defendants.

Case No. 2:22-cv-00982

**COMPLAINT FOR
DECLARATORY JUDGMENT
OF PATENT
NONINFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Akamai Technologies, Inc. (“Plaintiff” or “Akamai”) alleges for its
2 Complaint against defendants MediaPointe, Inc. and AMHC, Inc. (“Defendants”)
3 as follows:

4 **NATURE OF THE ACTION**

5 1. This action arises under 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

6 2. Akamai brings this action for a declaration that it does not infringe
7 any claim of U.S. Patent Nos. 8,559,426 (the “426 Patent”) and 9,426,195 (the
8 “195 Patent”) (collectively the “Asserted Patents”).

9 **PARTIES**

10 3. Akamai Technologies, Inc. is a corporation organized and existing
11 under the laws of the State of Delaware with its principal place of business in
12 Cambridge, Massachusetts. Akamai also has offices in Pasadena, California,
13 among other locations around the world. Akamai is a leading provider of internet
14 content delivery network (“CDN”) technology, which allows Akamai’s customers’
15 end-users to obtain Internet content such as webpages and applications around the
16 world, including in this judicial district, faster and more securely.

17 4. On information and belief, MediaPointe, Inc. (“MediaPointe”) is a
18 corporation organized and existing under the laws of California, with its principal
19 place of business at 3952 Camino Ranchero, Camarillo, California 93012.

20 5. On information and belief, MediaPointe is a wholly owned subsidiary
21 of AMHC, Inc. (“AMHC”). On information and belief, AMHC is a corporation
22 organized and existing under the laws of California, with its principal place of
23 business at 3952 Camino Ranchero, Camarillo, CA 93012.

24 **JURISDICTION**

25 6. This is an action for declaratory relief under the Patent Laws of the
26 United States, 35 U.S.C. § 1 *et seq.*

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1 7. The Court has subject matter jurisdiction over this action pursuant to
2 28 U.S.C. §§ 1331 and 1338(a) because this action involves claims arising under
3 the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and under the Federal
4 Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5 8. This Court has personal jurisdiction over Defendants because
6 MediaPointe, Inc. is a corporation organized and existing under the laws of
7 California, with its principal place of business at 3952 Camino Ranchero,
8 Camarillo, California 93012, and AMHC, Inc. is a California corporation with its
9 principal place business at 3952 Camino Ranchero, Camarillo, California 93012.

10 9. An actual and justiciable controversy exists between Akamai and
11 Defendants with respect to whether Akamai is liable for alleged infringement of
12 the Asserted Patents and whether Defendants own the Asserted Patents and have
13 the right to assert them against Akamai, requiring a declaration by the Court. The
14 controversy is immediate and substantial because, as discussed below, Defendants
15 have asserted that Akamai infringes the Asserted Patents based on identified
16 ongoing activities of Akamai—including among other things, Akamai’s operation,
17 use, and sale of certain products and services, including Akamai’s Content
18 Delivery Network (“CDN”), Adaptive Media Delivery, Akamai Intelligent Edge
19 Platform, Aura Managed CDN, Licensed CDN, Video On Demand, and Adaptive
20 Media Player product and service offerings” (“Accused Products”). Akamai
21 contends that the Accused Products do not infringe the Asserted Patents, and that
22 neither of the Defendants owns the Asserted Patents or has the right to assert them
23 against Akamai.

24 10. On August 16, 2021, MediaPointe filed a complaint against Akamai in
25 the U.S. District Court for the Western District of Texas under Case No. 6:21-CV-
26 852 (“WDTX Action”). A copy of MediaPointe’s complaint is attached as
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1 Exhibit 3 (“WDTX Complaint”). MediaPointe asserted in the WDTX Complaint
2 that Akamai infringes the Asserted Patents.

3 11. On February 3, MediaPointe provided discovery responses that
4 showed it did not own the Asserted Patents and had no right to assert them against
5 Akamai in the WDTX Action. On February 6, 2022, Akamai sent MediaPointe a
6 letter explaining that MediaPointe lacked standing to assert the Asserted Patents,
7 that the case must be dismissed, and that MediaPointe had improperly litigated its
8 case against Akamai for at least three months while it knew that it did not have
9 standing to assert the Asserted Patents. On February 8, 2022, and again on
10 February 9, 2022, Akamai requested that MediaPointe dismiss the WDTX Action
11 with prejudice, but MediaPointe refused. Instead, MediaPointe dismissed the
12 WDTX Action without prejudice on February 10, 2022.

13 12. Despite dismissing the WDTX Action, MediaPointe maintains that it
14 has the right to assert the Asserted Patents against Akamai pursuant to an alleged
15 agreement between MediaPointe and its parent company, AMHC. *See* Exhibit 4
16 (MediaPointe Interrogatory Response) at 7. MediaPointe and AMHC also assert
17 that AMHC is the current assignee of the Asserted Patents. *Id.*

18 13. In view of MediaPointe’s prior assertion of the Asserted Patents
19 against Akamai in the WDTX Action, its ongoing claim that it has the right to
20 assert the Asserted Patents against Akamai, and its refusal to dismiss the WDTX
21 Action with prejudice while maintaining its allegations that Akamai infringes the
22 Asserted Patents, as described further below, a threat of actual and imminent injury
23 exists to Akamai that can be redressed by judicial relief, and that injury is
24 sufficiently immediate and real to warrant the issuance of a declaratory judgment.
25 Such injury includes, among other things, uncertainty as to whether the
26 development, use, and sale of the Accused Products will be free from infringement
27 claims based on the Asserted Patents. Absent a declaration of noninfringement,
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1 Defendants will continue to wrongfully assert the Asserted Patents against
2 Akamai's Accused Products and will thereby cause Akamai irreparable injury and
3 damage.

4 VENUE

5 14. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1),
6 1391(c)(2), and 1391(d) because Defendants are both California corporations and
7 Defendants both have their principal place of business in this District at 3952
8 Camino Ranchero, Camarillo, CA 93012.

9 THE PATENTS

10 U.S. Patent No. 8,559,426

11 15. The '426 patent is titled "System and method for distribution of data
12 packets utilizing an intelligent distribution network." The named inventors of the
13 '426 patent are Ben A. Lear of Mudgee, Australia and Joseph F. Hayes of Frenchs
14 Forest, Australia. A true and correct copy of the '426 Patent is attached as
15 Exhibit 1.

16 16. MediaPointe asserts that it is the exclusive licensee of the '426 patent
17 and claims to have "the right ... to sue for past, present, and future infringement of
18 the [Asserted Patents]" and "to bring suit in its own name, at its own expense, and
19 on its own behalf for infringement of the [Asserted Patents]," pursuant to a "Patent
20 Assignment and License-Back Agreement" that it executed on August 25, 2021
21 with its parent company, AMHC. *See* Exhibit 4 (MediaPointe Interrogatory
22 Response) at 7. MediaPointe and AMHC also assert that AMHC is the current
23 assignee of the '426 patent. *Id.* MediaPointe also asserts that it has "equitable
24 title" to the '426 patent and is entitled to seek "equitable relief" against Akamai for
25 alleged infringement of the Asserted Patents. *See* Exhibit 5 (MediaPointe Feb. 8,
26 2022 Letter) at 2.

1 **U.S. Patent No. 9,426,195**

2 17. The '195 patent is also titled "System and method for distribution of
3 data packets utilizing an intelligent distribution network." The named inventors of
4 the '195 patent are Ben A. Lear of Mudgee, Australia and Joseph F. Hayes of
5 Frenchs Forest, Australia. A true and correct copy of the '195 Patent is attached as
6 Exhibit 2.

7 18. MediaPointe asserts that it is the exclusive licensee of the '195 patent
8 and claims to have "the right ... to sue for past, present, and future infringement of
9 the [Asserted Patents]" and "to bring suit in its own name, at its own expense, and
10 on its own behalf for infringement of the [Asserted Patents]," pursuant to a "Patent
11 Assignment and License-Back Agreement" that it executed on August 25, 2021
12 with its parent company, AMHC. *See* Ex. 4 (MediaPointe Interrogatory Response)
13 at 7. MediaPointe and AMHC also assert that AMHC is the current assignee of the
14 '195 patent. *Id.* MediaPointe also asserts that it has "equitable title" to the '195
15 patent and is entitled to seek "equitable relief" against Akamai for alleged
16 infringement of the Asserted Patents. *See* Ex. 5 (MediaPointe Feb. 8, 2022 Letter)
17 at 2.

18 **FACTUAL BACKGROUND**

19 19. On August 16, 2021, MediaPointe, Inc. filed a complaint against
20 Akamai in the U.S. District Court for the Western District of Texas. No. 6:21-CV-
21 852 ("WDTX Action").

22 20. In its WDTX Complaint, MediaPointe alleged that, among other
23 things, Akamai's operation, use, and sale of certain Akamai Accused Products (i.e.,
24 "Akamai's Content Delivery Network, Adaptive Media Delivery, Akamai
25 Intelligent Edge Platform, Aura Managed CDN, Licensed CDN, Video On
26 Demand, and Adaptive Media Player product and service offerings") infringes the
27 Asserted Patents. *See* Ex. 3 (WDTX Complaint).

1 21. MediaPointe's WDTX Complaint further alleged that MediaPointe
2 owns all rights, title, and interest in and to the Asserted Patents, including the right
3 to assert all causes of action under the Asserted Patents and the right to any
4 remedies for the infringement of the Asserted patents. *See* Ex. 3 (WDTX
5 Complaint) ¶¶ 32, 48.

6 22. On November 8, 2021, MediaPointe served infringement contentions,
7 including claim charts, asserting that the Accused Products allegedly infringe
8 claims 1-2, 6, 9-13, and 15-17 of the '426 patent and claims 1-8, 13, and 16-19 of
9 the '195 patent. *See* Ex. 6 (MediaPointe Infringement Contentions).

10 23. In response to MediaPointe's allegations, among other things, Akamai
11 challenged whether MediaPointe had standing to file and maintain its claims of
12 patent infringement regarding the Asserted Patents. Specifically, in connection
13 with the parties' November 1, 2021 Joint Case Readiness Status Report (No. 6:21-
14 CV-852, ECF No. 27) and based on review of the WDTX Complaint and the
15 assignment records for the Asserted Patents, Akamai challenged whether
16 MediaPointe owned the Asserted Patents or had the right to assert them. As
17 Akamai explained to the Court:

18 Akamai may seek to move to dismiss this case on the ground that
19 ***MediaPointe does not own the Asserted Patents and lacks standing to***
20 ***bring this suit.*** MediaPointe's complaint fails to provide facts or
21 evidence showing that it owns the Asserted Patents or has the right to
22 assert them. ... ***[B]ecause the assignment history of the Asserted***
23 ***Patents indicates that MediaPointe does not own the patents and***
24 ***MediaPointe's lack of standing is an exceptional circumstance that***
25 ***could moot this case, Akamai intends to seek discovery on this***
26 ***standing issue*** Specifically, Akamai would request discovery
27 regarding MediaPointe's standing, including all prior assignments of
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1 the Asserted Patents, so that this standing issue can be promptly
2 resolved. Akamai disagrees with MediaPointe's assertion that it would
3 be appropriate to delay this standing issue until after Markman
4 proceedings. *Whether MediaPointe has standing to bring this suit is*
5 *a threshold issue that should be resolved promptly* and before any
6 claim construction proceedings.

7 See No. 6:21-CV-852, ECF No. 27 at 2-3.

8 24. MediaPointe continued to maintain the WDTX Action, and, in
9 response to Akamai's concerns regarding standing, initially took the position that
10 there should be *no* discovery regarding standing issues until after the *Markman*
11 hearing. *Id.* at 3 ("Akamai's prospective motion to dismiss for lack of standing
12 and any request for standing-related discovery should be dealt with when Akamai
13 so moves, after *Markman*, and in due course."). In connection with the parties'
14 November 29, 2021 submission of a proposed scheduling order for the WDTX
15 Action, MediaPointe ultimately agreed to standing-related discovery commencing
16 January 3, 2022.

17 25. On January 4, 2022, Akamai served written discovery requests on
18 MediaPointe regarding its purported standing to bring the WDTX Action.

19 26. On February 3, 2022, MediaPointe served discovery responses
20 regarding its contentions that it had standing to assert Asserted Patents against
21 Akamai. MediaPointe's discovery responses were verified by MediaPointe's
22 President and CEO, Stephen Villoria. A copy of MediaPointe's February 3, 2022
23 Interrogatory Response is attached as Exhibit 4.

24 27. MediaPointe's discovery responses and correspondence shows that it
25 has no standing to assert the Asserted Patents against Akamai and that
26 MediaPointe knew that it had no standing as early as November 8, 2021, when it
27 applied to the Australian government to reinstate a company that had been
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1 deregistered for over 18 years in order to attempt to affect a transfer of rights to the
2 Asserted Patents to MediaPointe's parent AMHC. *See* Ex. 4 (MediaPointe
3 Interrogatory Response) at 7; Ex. 5 (MediaPointe Feb. 8, 2022 Letter).

4 28. On February 6, 2022, counsel for Akamai wrote to counsel for
5 MediaPointe to explain that MediaPointe's discovery responses and
6 correspondence showed that it did not have standing to assert the Asserted Patents
7 against Akamai and that the case must be dismissed.

8 29. On February 8, 2022, counsel for MediaPointe responded to Akamai
9 and—notwithstanding that MediaPointe's discovery responses and correspondence
10 showed that MediaPointe did not have standing to assert the Asserted Patents—
11 MediaPointe again claimed that it had standing to assert the Asserted Patents
12 against Akamai. A copy of this letter is attached as Exhibit 5. MediaPointe's
13 counsel concluded its letter by stating that “given the parties’ dispute with respect
14 to MediaPointe’s standing to assert the patents-in-suit, MediaPointe agrees to
15 dismiss the case.” Ex. 5 (Feb. 8, 2022 Letter) at 3. MediaPointe, however, did not
16 agree to dismiss the WDTX action with prejudice.

17 30. On February 8, 2022, counsel for MediaPointe and counsel for
18 Akamai conferred regarding the dismissal of the WDTX Action. Counsel for
19 Akamai requested that MediaPointe dismiss the WDTX Action with prejudice, but
20 MediaPointe would not agree to do so. On February 10, 2022, MediaPointe
21 dismissed the WDTX Action without prejudice to refiling its claims.

22 **CLAIMS FOR RELIEF**

23 **COUNT I**

24 **Declaratory Judgment of Noninfringement of U.S. Patent No. 8,559,426**

25 31. Paragraphs 1-30 are incorporated herein by reference.

26 32. Akamai has not infringed and does not infringe any claim of the '426
27 Patent, either directly or indirectly, literally or under the doctrine of equivalents,
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1 including by providing, making, using, offering for sale, or selling the Accused
2 Products, as alleged by MediaPointe in its WDTX Complaint.

3 33. For example, the Accused Products do not meet at least the following
4 limitations of claim 1:

- 5 • the claimed “management center”
- 6 • “wherein the management center comprises a mapping engine that is
7 configured to map trace routes between the management center, at least one
8 of the nodes, and at least the first client so as to determine one or more
9 optimal routes from the management center to the first client via the at least
10 one of the nodes”
- 11 • “configured to direct a node relaying the continuous stream of data from the
12 content provider to the first client to replicate the continuous stream of data
13 from the content provider, in response to subsequent requests for the
14 continuous stream of data, while the node is relaying the continuous stream
15 of data from the content provider to the first client”
- 16 • “wherein the management center is configured to downgrade lower priority
17 clients from a higher quality of service network link to a less optimal
18 network link when a higher priority client requests use of the higher quality
19 of service network link”

20 34. As another example, the Accused Products do not meet at least the
21 following limitations of claim 2:

- 22 • the claimed “management center”
- 23 • “directing the first client to a node that is selected as being best situated to
24 relay the continuous stream of data from a content provider to the first client
25 by using a mapping engine to map trace routes between the management
26 center, the node, and the first client, the first client being directed to the node
27 by the management center”

- 1 • “replicating the continuous stream of data from the content provider at the
- 2 selected node, in response to subsequent requests for the continuous stream
- 3 of data, while relaying the continuous stream of data from the content
- 4 provider to the first client”
- 5 • “downgrading lower priority clients from a higher quality of service network
- 6 link to a less optimal network link when a higher priority client requests use
- 7 of the higher quality of service network link.”

8 35. As another example, the Accused Products do not meet at least the
9 following limitations of claim 17:

- 10 • the claimed “management center”
- 11 • “receiving an initial request by a management center for a continuous stream
- 12 of data from a first client; mapping trace routes between the management
- 13 center and the first client;
- 14 • “mapping trace routes between the management center and one or more
- 15 nodes to relay the continuous stream of data from a content provider to the
- 16 first client”
- 17 • “determining a best route to relay the data to the first client from the content
- 18 provider based on a comparison between the trace routes between the
- 19 management center and the first client and the trace routes between the
- 20 management center and the one or more nodes, the best route including one
- 21 or more of: at least a portion of a network path from the management center
- 22 to the first client and at least a portion of a network path from the
- 23 management center to the one or more nodes”
- 24 • “replicating the continuous stream of data from the content provider, in
- 25 response to subsequent requests for the continuous stream of data, while
- 26 relaying the continuous stream of data from the content provider through the
- 27 one or more nodes to the first client”

1 selected node based on an identification that the selected node is already
2 relaying the content stream from the content provider to the first client”

3 42. As another example, the Accused Products do not meet at least the
4 following limitations of claim 13:

- 5 • the claimed “management center”
- 6 • “wherein the management center comprises a mapping engine that is
7 configured to map trace routes between the management center, at least one
8 of the nodes, and at least the first client so as to determine one or more
9 optimal routes from the management center to the first client via the at least
10 one of the nodes”
- 11 • “wherein the management center comprises a mapping engine that is ...
12 configured to direct a node relaying the content stream from the content
13 provider to the first client to replicate the content stream for other clients
14 during the relaying of the content stream, in response to subsequent requests
15 for the media content from the other clients, the other clients connected to
16 the node based on an identification that the node is already relaying the
17 content stream from the content provider to the first client.”

18 43. As another example, the Accused Products do not meet at least the
19 following limitations of claim 19:

- 20 • the claimed “management center”
- 21 • “receiving an initial request by a management center for media content from
22 a first client; mapping trace routes between the management center and the
23 first client”
- 24 • “mapping trace routes between the management center and one or more
25 nodes to relay a content stream from a content provider to the first client”
- 26 • “determining a best route to relay the content stream to the first client from
27 the content provider based on a comparison between the trace routes
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1 between the management center and the first client and the trace routes
 2 between the management center and the one or more nodes, the best route
 3 including one or more of: at least a portion of a network path from the
 4 management center to the first client and at least a portion of a network path
 5 from the management center to the one or more nodes”

- 6 • “replicating the content stream for other clients during the relaying of the
 7 content stream, in response to subsequent requests for the media content
 8 from the other clients, the other clients connected to the one or more nodes
 9 based on an identification that the one or more nodes is already relaying the
 10 content stream from the content provider through the one or more nodes to
 11 the first client.”

12 44. Akamai does not infringe the remaining claims of the ’195 patent for
 13 at least one or more of the above reasons.

14 45. As set forth above, an actual controversy exists between Akamai and
 15 Defendants with respect to the alleged infringement of the ’195 Patent and this
 16 controversy is likely to continue. Accordingly, Akamai seeks a judicial
 17 determination and declaration of the respective rights and duties of the parties with
 18 respect to the ’195 Patent.

19 46. Such a declaration is necessary and appropriate at this time in order
 20 that the parties may ascertain their respective rights and duties with respect to the
 21 matters set forth above.

22 COUNT III

23 **Declaratory Judgment of Lack of Standing to Assert the Asserted Patents** 24 **Against Akamai**

25 47. Paragraphs 1-46 are incorporated herein by reference.
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1 48. Despite MediaPointe's and AMHC's ongoing allegations that they
2 own the Asserted Patents and have the right to assert them against Akamai, they do
3 not have any right to assert the Asserted Patents against Akamai.

4 49. The discovery responses produced by MediaPointe in the WDTX
5 Action show that, on March 21, 2001, all rights to the patent applications to which
6 the Asserted Patents claim priority were transferred from the named inventors of
7 the Asserted Patents to an Australian Company called Streaming Media Australia
8 Pty. Ltd. ("SMA"). MediaPointe has failed to identify any valid assignment of
9 rights to the Asserted Patents—or the applications to which the Asserted Patents
10 claim priority—from SMA to MediaPointe, AMHC, or any other company.

11 50. As set forth above, an actual controversy exists between Akamai and
12 Defendants with respect to whether MediaPointe and/or AMHC own the Asserted
13 Patents or have the right to Assert them against Akamai, and this controversy is
14 ongoing and is likely to continue. Accordingly, Akamai seeks a judicial
15 determination and declaration that MediaPointe and AMHC do not own the
16 Asserted Patents or have the right to assert them against Akamai.

17 51. Such a declaration is necessary and appropriate at this time in order
18 that the parties may ascertain their respective rights and duties with respect to the
19 matters set forth above.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Akamai prays that judgment be entered in its favor and
22 requests:

- 23 (a) A judgment and declaration that Akamai has not infringed and
24 does not infringe in any manner any claim of the Asserted
25 Patents, directly, contributorily, or by inducement, and has not
26 otherwise infringed or violated any rights of Defendants;
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- 1 (b) A judgment and declaration that MediaPointe and AMHC do
2 not own the Asserted Patents or have the right to assert them
3 against Akamai;
- 4 (c) An injunction against Defendants and their affiliates,
5 subsidiaries, assigns, employees, agents, and/or anyone acting
6 in privity or concert with Defendants from charging
7 infringement or instituting any legal action for infringement of
8 the Asserted Patents against Akamai or anyone acting in privity
9 with Akamai, including the divisions, successors, assigns,
10 agents, suppliers, manufacturers, contractors and customers of
11 Akamai;
- 12 (d) A judgment and declaration that this is an exceptional case
13 within the meaning of 35 U.S.C. § 285, entitling Akamai to an
14 award of its reasonable attorneys' fees, expenses, and costs in
15 this action;
- 16 (e) An award to Akamai of its costs and reasonable expenses to the
17 fullest extent permitted by law;
- 18 (f) An award of such other and further relief as the Court may
19 deem just and proper.

20 **JURY DEMAND**

21 Pursuant to Federal Rule of Civil Procedure 38(b), Akamai hereby demands
22 a trial by jury on all issues so triable.
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1 Dated: February 11, 2022

Respectfully submitted,

2 **WILMER CUTLER PICKERING**
3 **HALE AND DORR LLP**

4 By:

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