

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

COMMWORKS SOLUTIONS, LLC,

Plaintiff

-against-

COMCAST CABLE COMMUNICATIONS,
LLC d/b/a XFINITY, COMCAST CABLE
COMMUNICATIONS MANAGEMENT,
LLC., and COMCAST BUSINESS
COMMUNICATIONS, LLC,

Defendants.

Civil Action No.: 2:21-cv-00459-JRG

Jury Trial Demanded

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff CommWorks Solutions, LLC (“CommWorks” or “Plaintiff”), by way of this Complaint against Defendants Comcast Cable Communications, LLC d/b/a Xfinity, Comcast Cable Communications Management, LLC, and Comcast Business Communications, LLC (collectively “Comcast” or “Defendants”), alleges as follows:

PARTIES

1. Plaintiff CommWorks Solutions, LLC is a limited liability company organized and existing under the laws of the State of Georgia, having its principal place of business at 44 Milton Avenue, Suite 254, Alpharetta, GA 30009.
2. On information and belief, Defendant Comcast Cable Communications, LLC is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 1701 John F. Kennedy Blvd., Philadelphia, Pennsylvania 19103. Comcast Cable Communications, LLC may be served through its registered agent Comcast

Capital Corporation, 1201 N. Market Street, Suite 1000, Wilmington, Delaware 19801.

3. On information and belief, Defendant Comcast Cable Communications Management, LLC is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 1701 John F. Kennedy Blvd., Philadelphia, Pennsylvania 19103. Comcast Cable Communications Management, LLC may be served through its registered agent CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, TX 75201. On information and belief, Comcast Cable Communications Management, LLC is registered to do business in the State of Texas and has been since at least November 10, 2011.

4. On information and belief, Defendant Comcast Business Communications, LLC is a limited liability company organized and existing under the laws of the State of Pennsylvania, having its principal place of business at 1701 John F. Kennedy Blvd., Philadelphia, Pennsylvania 19103. Comcast Business Communications, LLC may be served through its registered agent CT Corporation System, at 1999 Bryan St., Suite 900, Dallas, TX 75201. On information and belief, Comcast Business Communications, LLC is registered to do business in the State of Texas and has been since at least January 27, 2006.

JURISDICTION AND VENUE

5. This is an action under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*, for infringement by Comcast of claims of U.S. Patent No. 6,857,007 and U.S. Patent No. RE43,704. (collectively “the Patents-in-Suit”).

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Comcast is subject to personal jurisdiction of this Court because, *inter alia*, on information and belief, (i) Comcast maintains a regular and established place of business in Texas in this Judicial District at 2740 North Dallas Parkway, Suite 100, Plano, Texas 75093 (*see*

also at 116 S Colbert St, Dayton, TX 77535; *see also* at 3033 W President George Bush Hwy, Plano, TX 75075); (ii) Comcast employs employees and sells products and services to customers in this Judicial District; and (iii) the patent infringement claims arise directly from Comcast's continuous and systematic activity in this Judicial District.

8. Venue is proper as to Comcast in this Judicial District under 28 U.S.C. § 1400(b) because, *inter alia*, on information and belief, Comcast has a regular and established place of business in this Judicial District at 2740 North Dallas Parkway, Suite 100, Plano, Texas 75093 (*see also* at 116 S Colbert St, Dayton, TX 77535; *see also* at 3033 W President George Bush Hwy, Plano, TX 75075), and has committed acts of patent infringement in this Judicial District and/or has contributed to or induced acts of patent infringement by others in this District.

BACKGROUND

9. On February 15, 2005, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. 6,857,007 ("the '007 Patent"), entitled "Personal Digital Assistant Facilitated Communication System." A true and correct copy of the '007 Patent is attached hereto as Exhibit A.

10. At the time of the invention, conventional methods of sending and receiving facsimiles required a recipient to have a receiving facsimile device. Exhibit B at col. 1:18-24. The invention of the '007 Patent improved upon the conventional methods of sending and receiving facsimile transmissions via electronic mail through a fax-to-email communication system, thereby providing facsimile recipients with more flexibility and convenience sending and receiving facsimiles. *Id.* at 1:18-24, 2:64-3:10.

11. On October 2, 2012, the United States Patent and Trademark Office duly and lawfully issued U.S. Patent No. RE43,704 ("the '704 Patent"), entitled "Determining and Provisioning

Paths Within a Network of Communication Elements.” A true and correct copy of the ’704 Patent is attached hereto as Exhibit B.

12. At the time of the invention, the problem with prior network configuration management systems is that the modeling of the network elements, physical links, and virtual trunks maintains a layered view resulting in inefficient models that do not adapt well to diverse network elements and large networks, leading to large and complex graphs that create performance and scalability issues. Exhibit B at col. 2:40-46. Specifically, prior systems model a network by representing every port of every network element as a node of a graph and by maintaining a representation of the physical links that interconnect these ports as links that interconnect the nodes of the graph. *Id.* at col. 2:47-51. In addition, these systems separately maintain a services view of the network, which view is used to maintain representations of the established virtual trunks within the network. *Id.* at col. 2:51-54. These techniques result in a network model and network graph that are large and difficult to manage as the network grows, thereby creating the scalability issues. *Id.* at col. 2:54-56. In addition, because ports are modeled as nodes, network paths are determined by traversing each physical hop in the network leading to the performance issues. *Id.* at col. 2:56-59.

13. The invention of the ’704 Patent improved upon existent systems for provisioning network paths by modeling the networks to allow for efficient and scalable routing. *Id.* at col. 2:63-3:25. This is accomplished by representing a group of network elements, such as multiple ports, as a single routing node, and the routing nodes along with routing links are graphical represented in such a way that determining routing paths between points in the network more efficiently. *Id.*

14. CommWorks is the assignee and owner of the right, title, and interest in and to the

Patents-in-Suit, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

NOTICE

15. By letter and email dated February 21, 2020, CommWorks via its licensing agent notified Comcast of the existence of the Patents-in-Suit and invited Comcast to hold a licensing discussion.

16. By letter and email dated April 17, 2020, CommWorks via its legal counsel invited Comcast to hold a licensing discussion with CommWorks.

COUNT I: INFRINGEMENT OF THE '007 PATENT BY COMCAST

17. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

18. On information and belief, Comcast has infringed the '007 Patent, pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by performing fax-to-email communication methods (“Accused Products and Services”).

19. For example, on information and belief, Comcast has infringed at least claim 1 of the '007 Patent by performing a facsimile communication method. *See* Exs. 1-4 (showing Comcast Business offers Cloud Solutions, including eComFax that “send[s] and receives[s] faxes in a clean, safe, and reliable way, to any recipient, from any application, device, or location.”). The facsimile communication method comprises the step of receiving at a personal data assistant a destination address. *See* Ex. 5 (video demonstrating the Comcast Cloud Solutions’ eComFax mobile web app interface receiving a recipient's fax number at a mobile device). The facsimile communication method further comprises the step of conveying via a first data exchange the received address from the personal data assistant to a host interface portion together with commands instructing the host interface portion to initiate a facsimile delivery. *See* Ex. 5 (video demonstrating the Comcast Cloud Solutions’ eComFax mobile web app interface sending a

recipient's fax number and a "Send Fax" action to Comcast Cloud Solutions' eComFax host web application). The facsimile communication method further comprises the step of establishing, through the dialing of a destination address different from the destination address received during the receiving step, a communication session between the host interface portion and a forwarding facility. *See* Ex. 2 (video showing Comcast Cloud Solutions' eComFax host web application establishing a communication session with Comcast Cloud Solutions' eComFax faxing gateway to facilitate sending/receiving faxes/emails); Exs. 17-18 (Comcast Cloud Solutions' eComFax host web application is stored at Comcast's Cloud Solutions). The facsimile communication method further comprises the step of conveying the received address from the host interface portion to the forwarding facility, during the first communication session via a second data exchange independent of the first data exchange. *See* Ex. 5 (video demonstrating the Comcast Cloud Solutions' eComFax host web application sending a recipient's fax number to Comcast Cloud Solutions' eComFax faxing gateway); Ex. 2 (video showing Comcast Cloud Solutions' eComFax faxing gateway facilitating sending/receiving faxes/emails); Ex. 6 (showing a recipient's fax number in call SETUP messages according to the fax over IP standard). The facsimile communication method further comprises the step of conveying an image from a fax function associated with the host interface portion to the forwarding facility, during the first communication session via a third data exchange independent of the first and the second data exchanges. *See* Ex. 5 (video demonstrating the Comcast Cloud Solutions' eComFax host web application sending fax data such as a cover sheet and an image or file to Comcast Cloud Solutions' eComFax faxing gateway); Ex. 2 (video showing Comcast Cloud Solutions' eComFax faxing gateway facilitating sending/receiving faxes/emails); Ex. 6 (showing payload information, such as coversheet information, image files, and/or documents, in

TCP/UDP packets according to the fax over IP standard). The facsimile communication method further comprises the step of delivering the image as an electronic file from the forwarding facility to the destination address received at the personal data assistant. *See* Ex. 2 (video showing Comcast Cloud Solutions' eComFax faxing gateway delivering faxes/emails); Exs. 17-18 (Comcast Cloud Solutions' eComFax faxing gateway is stored at Comcast's Cloud Solutions). Alternatively or in addition, eComFax is at least contractually obligated to deliver faxes/emails at Comcast's direction or control with its faxing gateway. *See, e.g.*, Ex. 19 (“... eComFax is committed to respect the [delivery] instructions provided by THE CUSTOMER and to comply with them, within the prescribed period.”). On information and belief, a substantially similar agreement exists between eComFax and Comcast. Alternatively or in addition, Comcast controls and directs eComFax to perform this step via electronic communication with the forwarding facility. The facsimile communication method further comprises wherein the first data exchange involves at least a first protocol, and the second data exchange involves at least a second protocol different from the first protocol, and the third data exchange involves at least a third protocol different from each of the first and second protocols. *See* Ex. 2 (video showing Comcast Cloud Solutions' eComFax faxing gateway sending/receiving faxes/emails using 3 different steps); Exs. 6-8 (showing that according to fax over IP standards, communication of the destination address and communication of the payload image use different protocols).

20. On information and belief, Comcast contributes to the infringement of the '007 Patent pursuant to 35 U.S.C. § 271(c) by selling and/or offering to sell in the United States the eComFax web application through Comcast Cloud Solutions. *See* Exs. 1-4 (Comcast Business selling and/or offering for sell Cloud Solutions, including eComFax web application). In the directly infringing act disclosed in ¶ 19, Comcast knows that its Cloud Solutions component-

performance of at least claim 1 of the '007 Patent is especially adapted for use with vendor eComFax's component-performance and together is both patented and infringed. *See* ¶¶ 15-16 above; *see also* Exs. 1-4 (showing Comcast Business offers Cloud Solutions, including eComFax web application that "send[s] and receives[s] faxes in a clean, safe, and reliable way, to any recipient, from any application, device, or location."); Ex. 5 (video demonstrating Comcast's/eComFax's mobile web app interface receiving a recipient's fax number at a mobile device and sending a recipient's fax number, a "Send Fax" action, and fax data to Comcast's/eComFax's host web application); Ex. 2 (video showing Comcast's/eComFax's host web application establishing a communication session with Comcast's/eComFax's faxing gateway to facilitate sending/delivering/receiving faxes/emails using 3 different steps); Ex. 6 (showing a recipient's fax number in call SETUP messages and payload information, such as coversheet information, image files, and/or documents, in TCP/UDP packets according to the fax over IP standard); Exs. 6-8 (showing that according to fax over IP standards, communication of the destination address and communication of the payload image use different protocols). Comcast Cloud Solutions' eComFax web application has no substantial non-infringing use without at least a faxing gateway's performance of delivering faxes/emails.

21. On information and belief, Comcast has committed the foregoing infringing activities without a license.

COUNT II: INFRINGEMENT OF THE '704 PATENT BY COMCAST

22. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

23. On information and belief, Comcast has infringed the '704 Patent pursuant to 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, by providing services to its customers that make, use, offer to sell, sell in the United States or import into the United States the Comcast Masergy Managed SD-WAN platform, the Ciena Blue Planet Manage, Control and Plan

platform, and all other equipment and/or software platforms utilizing substantially similar methods of routing traffic used by Comcast to provide services to its customers (“Accused Products and Services”).

24. For example, on information and belief, Comcast has infringed and continues to infringe at least claim 11 of the '704 Patent by making, using, offering to sell, selling, and/or importing the Accused Products and Services, which perform a method for determining a path between points within a network, said network comprising a plurality of elements and a plurality of network links. *See* Ex. 9 (press release describing Comcast’s acquisition of Masergy; “We’re very pleased to have closed on our acquisition of Masergy and are excited to officially have their outstanding employees and leadership as part of the Comcast Business family.”); Ex. 10 (Showing Masergy offers a SD-WAN portal to configure and manage a network); Ex. 11 (showing the Masergy Managed SD-WAN platform “employ[s] encrypted tunnels to securely and dynamically route WAN traffic ...”); Ex. 12 (showing the Masergy Managed SD-WAN platform stores details of a network’s Equipment, configures Tunnels, and models a network’s Topology); Ex. 13 (showing the Masergy SD-WAN platform “dynamically selects the best path ...”); Ex. 14 showing “Comcast is using equipment from ... Ciena” including “Ciena’s LE-311v”); Ex. 15 (showing Comcast Business is a partner of Ciena); Ex. 16 (showing that Ciena’s Blue Planet Manage, Control and Plan (MCP) network configuration management system determines a path for routing network traffic, such as an Multiprotocol Label Switching (MPLS) Tunnel and/or an Ethernet [Virtual] Private Line (EPL/EVPL) Service, within a network that has several network elements and network links). The method for determining a path between points within a network of each of the Accused Products and Services comprises the step of modeling the plurality of elements as one or more routing nodes wherein each routing node represents a

partial element, a single element, or a set of elements, wherein each partial element, single element, or a set of elements represented by a given routing node has edge ports, and wherein any combination of edge ports that are associated with a given routing node and that are capable of being interconnected can be interconnected. *See* Ex. 12 (showing the Masergy Managed SD-WAN platform models network elements as single nodes, and each node has physical ports for linking network elements together); Ex. 16 (showing that Ciena's Blue Planet MCP network configuration management system models network elements as single element routing nodes, *e.g.*, the Ciena 8700-1 device and the Ciena 8700-3 device, wherein each routing node has edge ports such as port 2 on slot 10 of the 8700-1 device and port 20 on slot 4 of the 8700-3 device). The method for determining a path between points within a network of each of the Accused Products and Services further comprises modeling each physical link as a routing link, wherein routing links interconnect routing nodes. *See* Ex. 12 (showing the Masergy Managed SD-WAN platform models each physical link as a routing link interconnecting routing nodes implemented by, for example, an MPLS tunnel); Ex. 16 (showing that Ciena's Blue Planet MCP network configuration management system models each physical link as a routing link interconnecting routing nodes, *e.g.*, network elements such as the Ciena 8700-1 device and the Ciena 8700-3 device). The method for determining a path between points within a network of each of the Accused Products and Services further comprises determining the path by determining a set of routing nodes and routing links that interconnect the points. *See* Exs. 11-13 (showing the Masergy Managed SD-WAN platform determines the path, *i.e.*, determines a set of network elements and physical links connecting the network elements, implemented by, for example, an MPLS tunnel, on the network path being provisioned); Ex. 16 (showing that Ciena's Blue Planet MCP network configuration management system determines the path, *i.e.*, determines a set of

network elements, and physical links connecting the network elements, on the network path being provisioned).

25. On information and belief, Comcast has induced infringement of the '704 Patent pursuant to 35 U.S.C. § 271(b), by actively and knowingly inducing, directing, causing, and encouraging others, including, but not limited to, its partners, customers, and end users, to use, sell, and/or offer to sell in the United States, and/or import into the United States, the Accused Products and Services by, among other things, providing the Accused Products and Services, specifications, instructions, manuals, advertisements, marketing materials, and technical assistance relating to the installation, set up, use, operation, and maintenance of said products. *See* Ex. 9; Ex. 10 (Showing Masergy offers a SD-WAN portal to configure and manage a network); Ex. 11 (showing the Masergy Managed SD-WAN platform “employ[s] encrypted tunnels to securely and dynamically route WAN traffic ...”); Ex. 12 (showing the Masergy Managed SD-WAN platform stores details of a network’s Equipment, configures Tunnels, and models a network’s Topology); Ex. 13 (showing the Masergy SD-WAN platform “dynamically selects the best path ...”); Ex. 14 (showing “Comcast is using equipment from ... Ciena” including “Ciena’s LE-311v”); Ex. 15 (showing Comcast Business is a partner of Ciena); Ex. 16 (showing that Ciena’s Blue Planet Manage, Control and Plan (MCP) network configuration management system determines a path for routing network traffic, such as an Multiprotocol Label Switching (MPLS) Tunnel and/or an Ethernet [Virtual] Private Line (EPL/EVPL) Service, within a network that has several network elements and network links).

26. On information and belief, Comcast has committed the foregoing infringing activities without a license.

PRAYER FOR RELIEF

WHEREFORE, CommWorks prays for judgment in its favor against Comcast for the following relief:

- A. Entry of judgment in favor of CommWorks against Comcast on all counts;
- B. Entry of judgment that Comcast has infringed the Patents-in-Suit;
- C. Award of compensatory damages adequate to compensate CommWorks for Comcast's infringement of the '007 Patent and the '704 Patent, in no event less than a reasonable royalty as provided by 35 U.S.C. § 284;
- D. CommWorks' costs;
- E. Pre-judgment and post-judgment interest on CommWorks' award; and
- F. All such other and further relief as the Court deems just or equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Fed. R. Civ. Proc., Plaintiff hereby demands trial by jury in this action of all claims so triable.

Dated: March 24, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system pursuant to Local Rule CV-5(a)(3) on March 24, 2022.

/s/ Dmitry Kheyfits

Dmitry Kheyfits