

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

CTD NETWORKS LLC,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Civil Action No. 22-cv-01044-XR

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff CTD Networks LLC (“CTD Networks” or “Plaintiff”), files this First Amended Complaint for Patent Infringement against International Business Machines Corporation (“IBM” or “Defendant”), and would respectfully show the Court as follows:¹

PARTIES

1. Plaintiff is a Delaware corporation having an address located at 8 The Green, Suite #13063, Dover, Delaware 19901.

2. On information and belief, Defendant is a New York corporation with a principal address of One New Orchard Road, Armonk, New York 10504 and has regular and established places of business throughout this District, including at least at 11501 Burnet Road, Austin, TX 78758. *See* <https://ibm-zcouncil.com/venues/ibm-office-austin-tx/>. Defendant is registered to do business in Texas and has may be served via its registered agent at CT Corporation System, located at 1999 Bryan Street, Suite 900, Dallas Texas 75201.

¹ This First Amended Complaint is filed within 21 days of Defendant’s Rule 12(b) motion pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure.

3. On information and belief, Defendant directly and/or indirectly develops, designs, manufactures, distributes, markets, offers to sell and/or sells infringing products and services in the United States, including in the Western District of Texas, and otherwise directs infringing activities to this District in connection with its products and services.

JURISDICTION

4. This civil action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including without limitation 35 U.S.C. §§ 271, 281, 283, 284, and 285 based on Defendant's unauthorized commercial manufacture, use, importation, offer for sale, and sale of the Accused Products in the United States. This is a patent infringement lawsuit over which this Court has subject matter jurisdiction under, *inter alia*, 28 U.S.C. §§ 1331, 1332, and 1338(a).

5. This United States District Court for the Western District of Texas has general and specific personal jurisdiction over Defendant because, directly or through intermediaries, Defendant has committed acts within the District giving rise to this action and are present in and transact and conduct business in and with residents of this District and the State of Texas.

6. Plaintiff's causes of action arise, at least in part, from Defendant's contacts with and activities in this District and the State of Texas.

7. Defendant has committed acts of infringing the patents-in-suit within this District and the State of Texas by making, using, selling, offering for sale, and/or importing in or into this District and elsewhere in the State of Texas, products claimed by the patents-in-suit, including without limitation products made by practicing the claimed methods of the patents-in-suit. Defendant, directly and through intermediaries, makes, uses, sells, offers for sale, imports, ships, distributes, advertises, promotes, and/or otherwise commercializes such infringing products into this District and the State of Texas. Defendant regularly conducts and solicits business in, engages

in other persistent courses of conduct in, and/or derives substantial revenue from goods and services provided to residents of this District and the State of Texas.

8. This Court has personal jurisdiction over Defendant pursuant to TEX. CIV. PRAC. & REM. CODE § 17.041 *et seq.* Personal jurisdiction exists over Defendant because Defendant has minimum contacts with this forum as a result of business regularly conducted within the State of Texas and within this district, and, on information and belief, specifically as a result of, at least, committing the tort of patent infringement within Texas and this District. This Court has personal jurisdiction over Defendant, in part, because Defendant does continuous and systematic business in this District, including by providing infringing products and services to the residents of the Western District of Texas that Defendant knew would be used within this District, and by soliciting business from the residents of the Western District of Texas. For example, Defendant is subject to personal jurisdiction in this Court because, *inter alia*, Defendant has regular and established places of business throughout this District, including at least at 11501 Burnet Road, Austin, TX 78758, and directly and through agents regularly does, solicits, and transacts business in the Western District of Texas. Also, Defendant has hired and is hiring within this District for positions that, on information and belief, relate to infringement of the patents-in-suit. Accordingly, this Court's jurisdiction over the Defendant comports with the constitutional standards of fair play and substantial justice and arises directly from the Defendant's purposeful minimum contacts with the State of Texas.

9. This Court also has personal jurisdiction over Defendant, because in addition to Defendant's own online website and advertising within this District, Defendant has also made its products available within this judicial district and advertised to residents within the District to hire employees to be located in this District.

10. The amount in controversy exceeds \$75,000 exclusive of interests and costs.

11. Venue is proper in this Court under 28 U.S.C. § 1400(b) based on information set forth herein, which is hereby repeated and incorporated by reference. Further, upon information and belief, Defendant has committed or induced acts of infringement, and/or advertise, market, sell, and/or offer to sell products, including infringing products, in this District. In addition, and without limitation, Defendant has regular and established places of business throughout this District, including at least at 11501 Burnet Road, Austin, TX 78759.

THE PATENTS-IN-SUIT

12. On December 4, 2012, United States Patent No. 8,327,442 (“the ’442 Patent”), entitled “System and method for a distributed application and network security system (SDI-SCAM)” was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). The ’442 Patent claims patent-eligible subject matter and is valid and enforceable. CTD Networks is the exclusive owner by assignment of all rights, title, and interest in the ’442 Patent, including the right to bring this suit for damages, and including the right to sue and recover all past, present, and future damages for infringement of the ’442 Patent. Defendant is not licensed to the ’442 Patent, either expressly or implicitly, nor do they enjoy or benefit from any rights in or to the ’442 patent whatsoever. A true and correct copy of the ’442 patent is attached hereto as **Exhibit A.**

13. On September 6, 2016, United States Patent No. 9,438,614 (“the ’614 Patent”), entitled “Sdi-scam” was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). The ’614 Patent claims patent-eligible subject matter and is valid and enforceable. CTD Networks is the exclusive owner by assignment of all rights, title, and interest in the ’614 Patent, including the right to bring this suit for damages, and including the right to sue and recover

all past, present, and future damages for infringement of the '614 Patent. Defendant is not licensed to the '614 Patent, either expressly or implicitly, nor do they enjoy or benefit from any rights in or to the '614 patent whatsoever. A true and correct copy of the '614 patent is attached hereto as **Exhibit B**.

14. On November 22, 2016, United States Patent No. 9,503,470 (“the '470 Patent”), entitled “Distributed agent based model for security and response” was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). The '470 Patent claims patent-eligible subject matter and is valid and enforceable. CTD Networks is the exclusive owner by assignment of all rights, title, and interest in the '470 Patent, including the right to bring this suit for damages, and including the right to sue and recover all past, present, and future damages for infringement of the '470 Patent. Defendant is not licensed to the '470 Patent, either expressly or implicitly, nor do they enjoy or benefit from any rights in or to the '470 patent whatsoever. A true and correct copy of the '470 patent is attached hereto as **Exhibit C**.

15. On November 9, 2021, United States Patent No. 11,171,974 (“the '974 Patent”), entitled “Distributed agent based model for security monitoring and response” was duly and legally issued by the United States Patent and Trademark Office (“USPTO”). The '974 Patent claims patent-eligible subject matter and is valid and enforceable. CTD Networks is the exclusive owner by assignment of all rights, title, and interest in the '974 Patent, including the right to bring this suit for damages, and including the right to sue and recover all past, present, and future damages for infringement of the '974 Patent. Defendant is not licensed to the '974 Patent, either expressly or implicitly, nor do they enjoy or benefit from any rights in or to the '974 patent whatsoever. A true and correct copy of the '974 patent is attached hereto as **Exhibit D**.

16. The '442 Patent, '614 Patent, '470 Patent, and the '974 Patent are referred to herein as the “patents-in-suit.”

17. Plaintiff CTD Networks is the owner of the entire right, title, and interest in and to the patents-in-suit. The patents-in-suit are presumed valid under 35 U.S.C. § 282.

ACCUSED INSTRUMENTALITIES

18. The term “Accused Instrumentalities” or “Accused Products” refers to, by way of example and without limitation, IBM’s QRadar systems (*e.g.* <https://www.ibm.com/qradar>).

COUNT I
PATENT INFRINGEMENT OF THE '442 PATENT

19. Plaintiff restates and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

20. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims, including without limitation at least claim 1 of the '442 Patent, by making, using, testing, selling, offering for sale and/or importing into the United States Defendant’s Accused Products.

21. Defendant also indirectly infringes the '442 patent by actively inducing the direct infringement by third parties under 35 U.S.C. § 271(b). Defendant has knowingly and intentionally actively aided, abetted and induced others to directly infringe at least one claim of the '442 patent (such as its customers in this District and throughout the United States). Defendant continues to induce infringement of the '442 patent. Defendant has contributorily infringed and is a contributory infringer because, with knowledge of the '442 patent, it supplies a material part of an infringing method and/or system, where the material part is not a staple article of commerce, and is incapable of substantial noninfringing use. Defendant contributes to its customers’ infringement

because, with knowledge of the '442 patent, Defendant supplies the technology that allows its customers to infringe the patent.

22. On information and belief, Defendant's pre-suit infringement of the '442 Patent has been willful and merits increased damages. As described in detail below, Defendant knew of the '442 Patent and the risk of infringement posed by Defendant's Accused product, QRadar. Nonetheless, since at least February 8, 2021, Defendant has continued to infringe both directly and indirectly and has not ceased the sale and/or use of its Qradar security product.

23. Additionally, Defendant's post-suit infringement of the '442 Patent has been willful and merits increased damages because Defendant has known of how its Accused Products infringe the '442 Patent and has deliberately continued to infringe both directly and indirectly by offering for sale its Qradar system to its customers.

24. Defendant has known that its activities concerning the Accused Products infringed on or more claims of the '442 Patent since at least February 8, 2021 when IBM's General Manager of Intellectual Property received a patent portfolio overview including the '470, '614, and '442 patents. Specifically, IBM was made aware of the "litigation risks" that IBM's Security Products including QRadar posed in light of the patents-in-suit. A true and correct copy of the patent portfolio overview is attached hereto as **Exhibit I**.

25. On information and belief, Defendant has made no attempt to design around the claims of the '442 Patent.

26. On information and belief, Defendant did not have a reasonable basis for believing that the claims of the '442 Patent were invalid.

27. On information and belief, Defendant's Accused Products are available to businesses and individuals throughout the United States and in the State of Texas, including in this District.

28. CTD Networks has been damaged as the result of Defendant's infringement.

29. The claim chart attached hereto as **Exhibit E** describes how the elements of an exemplary claim 1 from the '442 Patent are infringed by the Accused Products. This provides details regarding only one example of Defendant's infringement, and only as to a single patent claim. Plaintiff reserves its right to amend and fully provide its infringement arguments and evidence thereof until its Preliminary and Final Infringement Contentions are later produced according to the court's scheduling order in this case.

COUNT II
PATENT INFRINGEMENT OF THE '614 PATENT

30. Plaintiff restates and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

31. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims, including without limitation at least claim 10 of the '614 Patent, by making, using, testing, selling, offering for sale and/or importing into the United States Defendant's Accused Products.

32. Defendant also indirectly infringes the '614 patent by actively inducing the direct infringement by third parties under 35 U.S.C. § 271(b). Defendant has knowingly and intentionally actively aided, abetted and induced others to directly infringe at least one claim of the '614 patent (such as its customers in this District and throughout the United States). Defendant continues to induce infringement of the '614 patent. Defendant has contributorily infringed and is a contributory infringer because, with knowledge of the '614 patent, it supplies a material part of an

infringing method and/or system, where the material part is not a staple article of commerce, and is incapable of substantial noninfringing use. Defendant contributes to its customers' infringement because, with knowledge of the '614 patent, Defendant supplies the technology that allows its customers to infringe the patent.

33. On information and belief, Defendant's pre-suit infringement of the '614 Patent has been willful and merits increased damages. As described in detail below, Defendant knew of the '614 Patent and the risk of infringement posed by Defendant's Accused product, QRadar. Nonetheless, since at least February 8, 2021, Defendant has continued to infringe both directly and indirectly and has not ceased the sale and/or use of its Qradar security product.

34. Additionally, Defendant's post-suit infringement of the '614 Patent has been willful and merits increased damages because Defendant has known of how its Accused Products infringe the '614 Patent and has deliberately continued to infringe both directly and indirectly by offering for sale its Qradar system to its customers.

35. Defendant has known that its activities concerning the Accused Products infringed on or more claims of the '614 Patent since at least February 8, 2021 when IBM's General Manager of Intellectual Property received a patent portfolio overview including the '614 patent. Specifically, IBM was made aware of the "litigation risks" that IBM's Security Products including QRadar posed in light of the patents-in-suit. *See Ex. I.*

36. On information and belief, Defendant has made no attempt to design around the claims of the '614 Patent.

37. On information and belief, Defendant did not have a reasonable basis for believing that the claims of the '614 Patent were invalid.

38. On information and belief, Defendant's Accused Products are available to businesses and individuals throughout the United States and in the State of Texas, including in this District.

39. CTD Networks has been damaged as the result of Defendant's infringement.

40. The claim chart attached hereto as **Exhibit F** describes how the elements of an exemplary claim 10 from the '614 Patent are infringed by the Accused Products. This provides details regarding only one example of Defendant's infringement, and only as to a single patent claim. Plaintiff reserves its right to amend and fully provide its infringement arguments and evidence thereof until its Preliminary and Final Infringement Contentions are later produced according to the court's scheduling order in this case.

COUNT III
PATENT INFRINGEMENT OF THE '470 PATENT

41. Plaintiff restates and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

42. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims, including without limitation at least claim 1 of the '470 Patent, by making, using, testing, selling, offering for sale and/or importing into the United States Defendant's Accused Products.

43. Defendant also indirectly infringes the '470 patent by actively inducing the direct infringement by third parties under 35 U.S.C. § 271(b). Defendant has knowingly and intentionally actively aided, abetted and induced others to directly infringe at least one claim of the '470 patent (such as its customers in this District and throughout the United States). Defendant continues to induce infringement of the '470 patent. Defendant has contributorily infringed and is a contributory infringer because, with knowledge of the '470 patent, it supplies a material part of an

infringing method and/or system, where the material part is not a staple article of commerce, and is incapable of substantial noninfringing use. Defendant contributes to its customers' infringement because, with knowledge of the '470 patent, Defendant supplies the technology that allows its customers to infringe the patent.

44. On information and belief, Defendant's pre-suit infringement of the '470 Patent has been willful and merits increased damages. As described in detail below, Defendant knew of the '470 Patent and the risk of infringement posed by Defendant's Accused product, QRadar. Nonetheless, since at least February 8, 2021, Defendant has continued to infringe both directly and indirectly and has not ceased the sale and/or use of its Qradar security product.

45. Additionally, Defendant's post-suit infringement of the '470 Patent has been willful and merits increased damages because Defendant has known of how its Accused Products infringe the '470 Patent and has deliberately continued to infringe both directly and indirectly by offering for sale its Qradar system to its customers.

46. On information and belief, Defendant has known that its activities concerning the Accused Products infringed on or more claims of the '470 Patent since at least February 8, 2021 when IBM's General Manager of Intellectual Property received a patent portfolio overview including the '470 patent. Specifically, IBM was made aware of the "litigation risks" that IBM's Security Products including QRadar posed in light of the patents-in-suit. *See Ex. I.*

47. On information and belief, Defendant has made no attempt to design around the claims of the '470 Patent.

48. On information and belief, Defendant did not have a reasonable basis for believing that the claims of the '470 Patent were invalid.

49. On information and belief, Defendant's Accused Products are available to businesses and individuals throughout the United States and in the State of Texas, including in this District.

50. CTD Networks has been damaged as the result of Defendant's infringement.

51. The claim chart attached hereto as **Exhibit G** describes how the elements of an exemplary claim 1 from the '470 Patent are infringed by the Accused Products. This provides details regarding only one example of Defendant's infringement, and only as to a single patent claim. Plaintiff reserves its right to amend and fully provide its infringement arguments and evidence thereof until its Preliminary and Final Infringement Contentions are later produced according to the court's scheduling order in this case.

COUNT IV
PATENT INFRINGEMENT OF THE '974 PATENT

52. Plaintiff restates and realleges the preceding paragraphs of this Complaint as if fully set forth herein.

53. Defendant has, under 35 U.S.C. §271(a), directly infringed, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims, including without limitation at least claim 1 of the '974 Patent, by making, using, testing, selling, offering for sale and/or importing into the United States Defendant's Accused Products.

54. Defendant also indirectly infringes the '974 patent by actively inducing the direct infringement by third parties under 35 U.S.C. § 271(b). Defendant has knowingly and intentionally actively aided, abetted and induced others to directly infringe at least one claim of the '974 patent (such as its customers in this District and throughout the United States). Defendant continues to induce infringement of the '974 patent. Defendant has contributorily infringed and is a contributory infringer because, with knowledge of the '974 patent, it supplies a material part of an

infringing method and/or system, where the material part is not a staple article of commerce, and is incapable of substantial noninfringing use. Defendant contributes to its customers' infringement because, with knowledge of the '974 patent, Defendant supplies the technology that allows its customers to infringe the patent.

55. Defendant has known that its activities concerning the Accused Products infringed on or more claims of the '974 Patent since the filing of original Complaint in this present action.

56. Defendant's post-suit infringement of the '974 Patent has been willful and merits increased damages because Defendant has known of how its Accused Products infringe the '974 Patent and has deliberately continued to infringe both directly and indirectly by offering for sale its Qradar system to its customers.

57. On information and belief, Defendant has made no attempt to design around the claims of the '974 Patent.

58. On information and belief, Defendant did not have a reasonable basis for believing that the claims of the '974 Patent were invalid.

59. On information and belief, Defendant's Accused Products are available to businesses and individuals throughout the United States and in the State of Texas, including in this District.

60. CTD Networks has been damaged as the result of Defendant's infringement.

61. The claim chart attached hereto as **Exhibit H** describes how the elements of an exemplary claim 1 from the '974 Patent are infringed by the Accused Products. This provides details regarding only one example of Defendant's infringement, and only as to a single patent claim. Plaintiff reserves its right to amend and fully provide its infringement arguments and

evidence thereof until its Preliminary and Final Infringement Contentions are later produced according to the court's scheduling order in this case.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff CTD Networks respectfully requests the following relief:

A. A judgment that Defendant has directly infringed either literally and/or under the doctrine of equivalents and continue to directly infringe the patents-in-suit;

B. A judgment that Defendant has induced infringement and continues to induce infringement of the patents-in-suit;

C. A judgment that Defendant has contributorily infringed and continues to contributorily infringe the patents-in-suit;

D. A judgment and order requiring Defendant to pay Plaintiff damages under 35 U.S.C. § 284 including past damages based on, *inter alia*, any necessary compliance with 35 U.S.C. §287, treble damages for willful infringement as provided by 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement through entry of the final judgment with an accounting as needed;

E. A judgment that this is an exceptional case within the meaning of 35 U.S.C. § 285 and Plaintiff is therefore entitled to reasonable attorneys' fees;

F. A judgment and order requiring Defendant to pay Plaintiff pre-judgment and post-judgment interest on the damages awarded;

G. A judgment and order awarding a compulsory ongoing royalty;

H. A judgment and order awarding Plaintiff costs associated with bringing this action;

I, A judgment granting a preliminary and permanent injunction that restrains and enjoins Defendant, its officers, directors, divisions, employees, agents, servants, parents, subsidiaries, successors, assigns, and all those in privity, concert or participation with them from directly or indirectly infringing the patents-in-suit; and

J. Such other and further relief as the Court deems just and equitable.

JURY TRIAL DEMANDED

Pursuant to FED. R. CIV. P. 38, Plaintiff CTD Networks hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

Ramey LLP



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Attorneys for CTD Networks, LLC

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure and LR5, I hereby certify that all counsel of record who have appeared in this case are being served on this day of February 13, 2023, with a copy of the foregoing via email and ECF filing.

/s/ William P. Ramey, III
William P. Ramey, III