

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

CRYSTAL MOUNTAIN
COMMUNICATIONS, LLC,

Plaintiff,

v.

ZYXEL COMMUNICATIONS
CORPORATION and ZYXEL
NETWORKS CORPORATION,

Defendants.

CIVIL ACTION NO. 4:24-cv-100

ORIGINAL COMPLAINT FOR
PATENT INFRINGEMENT

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Crystal Mountain Communications, LLC (“CMC” or “Plaintiff”) files this original complaint against Defendants Zyxel Communications Corporation (“Zyxel Communications”) and Zyxel Networks Corporation (“Zyxel Networks”) (collectively, “Zyxel”) alleging, based on its own knowledge as to itself and its own actions and based on information and belief as to all other matters, as follows:

PARTIES

1. CMC is a limited liability company formed under the laws of the State of Texas, with a registered address of 17350 State Hwy 249, Ste 220, Houston, TX 77064.
2. Upon information and belief, both Zyxel Communications and Zyxel Networks are corporations duly organized and existing under the laws of Taiwan, with a place of business located at No. 2, Industry East Rd. IX, Hsinchu Science Park, Hsinchu, 30076, Taiwan. Zyxel Communications and Zyxel Networks may also be served with process by serving the Texas Secretary of State, 1019 Brazos Street, Austin, Texas 78701, as its agent for service because it engages in business in Texas but has not designated or maintained a resident agent for service of

process or a regular place of business in Texas as required by statute. This action arises out of that business.

3. Zyxel Communications and Zyxel Networks and each of their respective foreign and United States subsidiaries, affiliates, and related companies (“Zyxel and its affiliates”) comprise an extensive portfolio of computer networking products, including the Zyxel brand.

4. Zyxel and its affiliates are part of the same corporate structure and distribution chain for the making, importing, offering to sell, selling, and using of the accused devices in the United States, including in the State of Texas generally and this judicial district in particular.

5. Zyxel and its affiliates share the same management, common ownership, advertising platforms, facilities, distribution chains and platforms, and accused product lines and products involving related technologies.

6. Zyxel and its affiliates regularly contract with customers regarding equipment or services that will be provided by their affiliates on their behalf.

7. Thus, Zyxel and its affiliates operate as a unitary business venture and are jointly and severally liable for the acts of patent infringement alleged herein.

JURISDICTION AND VENUE

8. This is an action for infringement of United States patents arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a).

9. This Court has personal jurisdiction over Zyxel pursuant to due process and/or the Texas Long Arm Statute because, inter alia, (i) Zyxel has done and continues to do business in Texas; and (ii) Zyxel has committed and continues to commit acts of patent infringement in the State of Texas, including making, using, offering to sell, and/or selling accused products in Texas, and/or importing accused products into Texas, including by Internet sales and sales via

retail and wholesale stores, inducing others to commit acts of patent infringement in Texas, and/or committing a least a portion of any other infringements alleged herein. In the alternative, Zyxel is subject to this Court's specific personal jurisdiction consistent with the principles of due process and the Federal Long-Arm Statute of Fed. R. Civ. P. 4(k)(2) because: (1) it has substantial contacts with the United States and committed and/or induced acts of patent infringement in the United States; and (2) it is not subject to jurisdiction in any state's courts of general jurisdiction.

10. Venue is proper as to Zyxel because it is organized under the laws of a foreign jurisdiction. 28 U.S.C. § 1391(c)(3) provides that "a defendant not resident in the United States may be sued in any judicial district, and the joinder of such a defendant shall be disregarded in determining where the action may be brought with respect to other defendants." *See also In re HTC Corp.*, 889 F.3d 1349 (Fed. Cir. 2018).

BACKGROUND

11. U.S. Patent No. 7,103,313 ("the '313 Patent"), titled "Automatic Determination of Access Point Content and Services for Short-Range Wireless Terminals," teaches methods for the automatic determination of access point content and services.

12. U.S. Patent No. 7,266,121 ("the '121 Patent"), titled "Flow Labels" teaches methods and systems for allocating a flow label for a packet data flow.

13. U.S. Patent No. 7,746,824 ("the '824 Patent"), titled "Method and Apparatus for Establishing Multiple Bandwidth-Limited Connections for a Communication Device," teaches methods and systems for establishing multiple bandwidth-limited connections for a communication device.

COUNT I: DIRECT INFRINGEMENT OF U.S. PATENT NO. 7,103,313

14. On September 5, 2006, the '313 Patent was duly and legally issued by the United States Patent and Trademark Office for an invention entitled "Automatic Determination of Access Point Content and Services for Short-Range Wireless Terminals."

15. CMC is the owner of the '313 Patent, with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '313 Patent against infringers, and to collect damages for all relevant times.

16. Zyxel made, had made, used, imported, provided, supplied, distributed, sold, and/or offered various devices with WiFi capabilities. For example, Zyxel makes, uses, and sells access points that support WiFi 6. Zyxel's devices with WiFi 6 capability include software and hardware on the devices that implement the inventions claimed in the '313 Patent.

17. By doing so, Zyxel has directly infringed (literally and/or under the doctrine of equivalents) at least Claim 1 of the '313 Patent. The infringing activities in this regard are ongoing.

18. The Accused Products include all Zyxel products that comply with the 802.11 - 2012 Standard (and subsequent standards that are backwards compatible with such standard).

19. CMC has been damaged as a result of the infringing conduct by Zyxel. Thus, Zyxel is liable to CMC in an amount that adequately compensates it for such infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

20. CMC and/or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '313 Patent.

21. Exhibit A sets forth CMC's illustrative claim chart for claim 1 of the '313 Patent.

COUNT II: DIRECT INFRINGEMENT OF U.S. PATENT NO. 7,266,121

22. On September 4, 2007, the '121 Patent was duly and legally issued by the United States Patent and Trademark Office for an invention entitled "Flow Labels."

23. CMC is the owner of the '121 Patent, with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '121 Patent against infringers, and to collect damages for all relevant times.

24. Zyxel made, had made, used, imported, provided, supplied, distributed, sold, and/or offered various devices with WiFi capabilities. For example, Zyxel makes, uses, and sells access points that support WiFi 6. Zyxel's devices with WiFi 6 capability include software and hardware on the devices that implement the inventions claimed in the '121 Patent.

25. By doing so, Zyxel has directly infringed (literally and/or under the doctrine of equivalents) at least Claim 1 of the '121 Patent. The infringing activities in this regard are ongoing.

26. The Accused Products include all Zyxel products that comply with the 802.11n - 2009 Standard (and subsequent standards that are backwards compatible with such standard).

27. CMC has been damaged as a result of the infringing conduct by Zyxel. Thus, Zyxel is liable to CMC in an amount that adequately compensates it for such infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

28. CMC and/or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '121 Patent.

29. Exhibit B sets forth CMC's illustrative claim chart for claim 1 of the '121 Patent.

COUNT III: DIRECT INFRINGEMENT OF U.S. PATENT NO. 7,746,824

30. On June 29, 2010, the '824 Patent was duly and legally issued by the United States Patent and Trademark Office for an invention entitled "Method and Apparatus for Establishing Multiple Bandwidth-Limited Connections for a Communication Device."

31. CMC is the owner of the '824 Patent, with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '824 Patent against infringers, and to collect damages for all relevant times.

32. Zyxel made, had made, used, imported, provided, supplied, distributed, sold, and/or offered various devices utilizing a 5G Modem. For example, Zyxel makes, uses, and sells access points that include a 5G Modem. Zyxel's devices with 5G Modems include software and hardware on the devices that implement the inventions claimed in the '824 Patent.

33. By doing so, Zyxel has directly infringed (literally and/or under the doctrine of equivalents) at least Claim 21 of the '824 Patent. The infringing activities in this regard are ongoing.

34. The Accused Products include all Zyxel products that include 802.11ax and/or 4G and/or 5G Modem.

35. CMC has been damaged as a result of the infringing conduct by Zyxel. Thus, Zyxel is liable to CMC in an amount that adequately compensates it for such infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

36. CMC and/or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law for infringement of the '824 Patent.

37. Exhibit C and Exhibit D set forth CMC's illustrative claim chart for claim 21 of the '824 Patent.

ADDITIONAL ALLEGATIONS REGARDING INFRINGEMENT

38. Zyxel has also directly infringed the '313, '121, and '824 Patents by exercising direction or control over the use of the accused products by its customers. When Zyxel's customers use the accused products, Zyxel is putting the accused products into service and conditions the benefit received by each customer from using the accused products (which utilize the methods taught by the '313, '121, and '824 Patents). Use of the accused products in such manner infringes the '313, '121, and '824 Patents.

39. Zyxel has also indirectly infringed the '313, '121, and '824 Patents by inducing others to directly infringe these patents. Zyxel has induced the end-users, Zyxel's customers, to directly infringe (literally and/or under the doctrine of equivalents) the '313, '121, and '824 Patents by using the accused products. Zyxel took active steps, directly and/or through contractual relationships with others, with the specific intent to cause them to use the accused products in a manner that infringes Claim 1 of the '313 Patent, Claim 1 of the '121 Patent, and Claim 21 of the '824 Patent. Such steps by Zyxel included, among other things, advising or directing customers and end-users to use the accused products in an infringing manner; advertising and promoting the use of the accused products in an infringing manner; and/or distributing instructions that guide users to use the accused products in an infringing manner. Zyxel is performing these steps, which constitute induced infringement with the knowledge of the '313, '121, and '824 Patents and with the knowledge that the induced acts constitute infringement. Zyxel is aware that the normal and customary use of the accused products by Zyxel's customers would infringe the '313, '121, and '824 Patents. Zyxel's inducement is ongoing.

40. Zyxel has also indirectly infringed by contributing to the infringement of the '313, '121, and '824 Patents. Zyxel has contributed to the direct infringement of the '313, '121, and '824 Patents by the end-user of the accused products. The accused products have special features that are specially designed to be used in an infringing way and that have no substantial uses other than ones that infringe Claim 1 of the '313 Patent, Claim 1 of the '121 Patent, and Claim 21 of the '824 Patent. The special features constitute a material part of the invention of one or more of the claims of the '313, '121, and '824 Patents and are not staple articles of commerce suitable for substantial non-infringing use. Zyxel's contributory infringement is ongoing.

41. Zyxel has knowledge of the '313, '121, and '824 Patents at least as of the date when it was notified of the filing of this action.

42. Furthermore, on information and belief, Zyxel has a policy or practice of not reviewing the patents of others (including instructing its employees to not review the patents of others), and thus has been willfully blind of CMC's patent rights.

43. Zyxel's actions are at least objectively reckless as to the risk of infringing a valid patent and this objective risk was either known or should have been known by Zyxel. Zyxel's direct and indirect infringement one or more of the '313, '121, and '824 Patents is, has been, and continues to be willful, intentional, deliberate, and/or in conscious disregard of CMC's rights under the patent.

44. CMC has been damaged as a result of the infringing conduct by defendant alleged above. Thus, Zyxel is liable to CMC in an amount that adequately compensates it for such infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

CMC hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

CMC requests that the Court find in its favor and against Zyxel, and that the Court grant CMC the following relief:

- a. Judgment that one or more claims of the '313, '121, and '824 Patents have been infringed, either literally and/or under the doctrine of equivalents, by Zyxel and/or all others acting in concert therewith;
- b. A permanent injunction enjoining Zyxel and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from infringement of one or more of the '313, '121, and '824 Patents; or, in the alternative, an award of a reasonable ongoing royalty for future infringement of one or more of the '313, '121, and '824 Patents by such entities;
- c. Judgment that Zyxel account for and pay to CMC all damages to and costs incurred by CMC because of Zyxel's infringing activities and other conduct complained of herein, including an award of all increased damages to which CMC is entitled under 35 U.S.C. § 284;
- d. That CMC be granted pre-judgment and post-judgment interest on the damages caused by Zyxel's infringing activities and other conduct complained of herein;
- e. That this Court declare this an exceptional case and award CMC its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- f. That CMC be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: February 5, 2024

Respectfully submitted,

/s/ Zachariah S. Harrington

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