

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

Civil Action No. _____

GLOBAL CROSSING TELECOMMUNICATIONS, INC.,
a Michigan corporation

Plaintiff,

vs.

RATES TECHNOLOGY, INC.,
a Delaware corporation

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Global Crossing Telecommunications, Inc. ("Global Crossing") alleges its complaint against Defendant Rates Technology, Inc. ("Rates") as follows:

Parties

1. Global Crossing is a corporation organized and existing under the laws of the State of Michigan with its principal place of business in Rochester, New York.

2. Rates is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 50 Route 111, Suite 210, Smithtown, NY 11787.

JURISDICTION AND VENUE

3. This civil action regarding allegations of patent infringement arises under Title 35 of the United States Code (35 U.S.C. §§ 1 et seq.), and the Declaratory Judgment Act (28 U.S.C. §§2201 and 2202).

4. This Court has jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

5. An actual, justifiable controversy exists between the parties with respect to infringement of U.S. Patent Nos. 5,425,085 (“the ‘085 patent”) and 5,519,769 (“the ‘769 patent”) (collectively “the Patents”). Specifically, Rates contends that Voice over Internet Protocol (VoIP) services and systems infringe the Patents. Global Crossing makes, uses, sells and/or offers to sell VoIP services and systems in the United States and contends that it has the right to make, use, sell and/or offer to sell such VoIP services and systems in the United States without license from Rates of any of the Patents. The acts of Rates indicate its intent to enforce the Patents against Global Crossing and have created a reasonable apprehension in Global Crossing that it will face a patent infringement suit by Rates relating to Global Crossing’s VoIP services and systems.

6. Venue is proper in this district under 28 U.S. C. §1391.

7. Rates conducts continuous and substantial business in Colorado. Rates has intentionally engaged in contacts with Colorado involving the Patents. On information and belief, these contacts include entering into license and/or covenant not to sue agreements and negotiating such agreements with companies in Colorado with respect to the Patents; for example, Qwest Communications, TW Telecom, and Level 3 Communications, LLC. Further,

Rates has initiated at least one infringement action in this District, therefore voluntarily availing itself to jurisdiction in this District. *See Rates Technology Inc. v. Tele-Matic Corp.*, Case No. CV 1:95-cv-01635-ABJ (D.Colo.) (Complaint filed on June 28, 1995).

8. Global Crossing is licensed to do business, and regularly conducts business in the State of Colorado. Global Crossing also maintains offices located in Westminster, Colorado, and maintains a network operations center in Denver, Colorado. Accordingly, this District has personal jurisdiction over both Rates and Global Crossing.

BACKGROUND

9. Rates contends it is the lawful owner of the Patents and contends to have the right to sue and to recover for any and all infringements of the Patents at all relevant times.

10. The '085 patent issued on June 13, 1995 and is entitled "Least Cost Routing Device for Separate Connection into Phone Line." The '769 patent issued on May 28, 2002 and is entitled "Method and System for Updating a Call Rating Database." (collectively "the Patents")

11. On May 13, 2011, Rates filed a lawsuit against Global Crossing Limited ("GCL") in the United States District Court for the Southern District of New York ("the New York action"). A copy of Rates' complaint against GCL in the New York action is attached as Exhibit 1 (the Patents are attached thereto as Exhibits to the complaint in the New York action).

12. In the New York action, Rates is alleging that GCL (not Global Crossing) has willfully infringed the Patents within the United States, including without limitation through the building, maintenance and operation of telecommunications equipment, which Rates alleges

infringes the Patents, and the marketing, offering for sale and sale of Internet telecommunications services provided on equipment which Rates alleges infringes the Patents.

13. In the New York action, Rates is seeking damages from GCL in an amount not less than \$360,000,000.

14. Rates has not served GCL with the complaint, even though the case has been on file for more than 45 days.

15. Global Crossing is an indirect, wholly-owned subsidiary of GCL.

16. GCL does not use VoIP systems or provide VoIP services to its customers, and GCL is not registered to do business in New York. However, Global Crossing does use VoIP systems in the operation of its business, and sells and offers to sell services to its customers that use VoIP technology (“Global Crossing’s VoIP Business”).

17. At this time, Global Crossing has not been named a party to the New York action. As between Rates and Global Crossing, Global Crossing is the first to file a civil action in any district court.

18. Upon information and belief, and within the past five years, Rates has also sued many other entities for patent infringement of at least one of the Patents based upon the manufacture, use and sale of various systems, services and products in the United States, including phone systems, Internet telephone systems, VoIP services, products, and systems, wireless telecommunications systems, and/or electronic market systems. Such lawsuits include, without limitation, the following:

- a. *Rates Inc. v. METROPCS Communications, Inc.*, 1:2011-cv-03255, N.Y.S.D.
- b. *Rates Inc. v. Cox Communications, Inc.*, 1:2011-cv-01324, N.Y.S.D.

- c. *Rates Inc. v. Mediacom Communications Corp.*, 1:2010-cv-09449, N.Y.S.D.
- d. *Rates Inc. v. Megapath Inc.*, 1:2010-cv-06396, N.Y.S.D.
- e. *Rates Inc. v. j2 Global Communications*, 1:2010-cv-04527, N.Y.S.D.
- f. *Rates Inc. v. HTC Corp. et al.*, 1:2009-cv-10385, N.Y.S.D.
- g. *Rates Inc. v. Hawk Communications LLC*, 1:2009-cv-10386, N.Y.S.D.
- h. *Rates Inc. v. RCN Corp.*, 1:2009-cv-04445, N.Y.S.D.
- i. *Rates Inc. v. Viper Int'l LLC*, 1:2009-cv-04068, N.Y.S.D.
- j. *Rates Inc. v. Paetec Holding Corp.*, 1:2009-cv-01594, N.Y.S.D.
- k. *Rates Inc. v. Callcentric, Inc. et al.*, 1:2008-cv-10731, N.Y.S.D.
- l. *Rates Inc. v. Arbinet-Thexchange, Inc.*, 1:2008-cv-08213, N.Y.S.D.
- m. *Rates Inc. v. Sipmedia Enterprises LLC*, 1:2008-cv-08050, N.Y.S.D.
- n. *Rates Inc. v. Cordia Corp. et al.*, 1:2008-cv-05782, N.Y.S.D.
- o. *Rates Inc. v. Netgear, Inc.*, 1:2008-cv-05783, N.Y.S.D.
- p. *Rates Inc. v. Voip Your Life, LLC*, 1:2008-cv-05510, N.Y.S.D.
- q. *Rates Inc. v. VOIP.com*, 1:2008-cv-05477, N.Y.S.D.
- r. *Rates Inc. v. Fonality, Inc.*, 2:2008-cv-00853, N.Y.E.D.
- s. *Rates Inc. v. HostRocket.com, Inc.*, 2:2008-cv-00644, N.Y.E.D.
- t. *Rates Inc. v. Qwest Communications Co. et al.*, 1:2007-cv-00442, D.D.E.
- u. *Rates Inc. v. Primus Telecommunications Inc. et al.*, 1:2007-cv-00441, D.D.E.
- v. *Rates Inc. v. Time Warner Telecom Inc.*, 2:2006-cv-05243, N.Y.E.D.
- w. *Rates Inc. v. Net2phone, Inc. et al.*, 2:2006-cv-03604, N.Y.E.D.

19. In view of the allegations in the New York action, Rates appears to contend that certain (but as yet unspecified) products, parts, and/or services of Global Crossing's VoIP Business infringe the Patents within the United States, including without limitation through the building, maintenance and operation of telecommunications equipment which Rates alleges infringes the Patents, and the marketing, offering for sale and sale of Internet telecommunications services provided on equipment which Rates alleges infringes the Patents.

20. Global Crossing denies Rates' contentions. Therefore, an actual controversy exists as to whether Global Crossing infringes either of the Patents. Absent a declaration of non-infringement, Rates will continue to wrongfully assert the Patents against Global Crossing, causing Global Crossing irreparable harm.

COUNT I

DECLARATION OF NON-INFRINGEMENT OF U.S. PATENT NO. 5,425,085

21. The allegations of the preceding paragraphs 1-20 are repeated and incorporated by reference.

22. Based on the allegations in the New York action against GCL and Rates' prior litigation of the Patents against many other companies, Global Crossing has a reasonable apprehension that Rates will file a lawsuit against Global Crossing alleging infringement of the '085 patent.

23. Global Crossing has not infringed, is not now infringing, will not infringe, either directly, contributorily, or by inducement, any claim of the '085 patent.

24. Accordingly, a valid and justiciable controversy has arisen and exists between Global Crossing and Rates with respect to the '085 patent and Global Crossing seeks declaration

that the '085 patent is not infringed, contributorily infringed, or infringed through inducement by Global Crossing.

COUNT II

DECLARATION OF NON-INFRINGEMENT OF U.S. PATENT NO. 5,519,769

25. The allegations of the preceding paragraphs 1-20 are repeated and incorporated by reference.

26. Based on the allegations in the New York action against GCL and Rates' prior litigation of the Patents against many other companies, Global Crossing has a reasonable apprehension that Rates will file a lawsuit against Global Crossing alleging infringement of the '769 patent.

27. Global Crossing has not infringed, is not now infringing, will not infringe, either directly, contributorily, or by inducement, any claim of the '769 patent.

28. Accordingly, a valid and justiciable controversy has arisen and exists between Global Crossing and Rates with respect to the '769 patent and Global Crossing seeks declaration that the '769 patent is not infringed, contributorily infringed, or infringed through inducement by Global Crossing.

REQUESTED RELIEF

Global Crossing requests an entry of judgment that:

1. declares that U.S. Patent No. 5,425,085 is not infringed, contributorily infringed, or infringed through inducement by Global Crossing;
2. declares that U.S. Patent No. 5,519,769 is not infringed, contributorily infringed, or infringed through inducement by Global Crossing;

3. enjoins and restrains Rates from enforcing or making any claim that Global Crossing infringes U.S. Patent No. 5,425,085 in any way;
4. enjoins and restrains Rates from enforcing or making any claim that Global Crossing infringes U.S. Patent No. 5,519,769 in any way;
5. awards Global Crossing its costs, expenses and attorney's fees, in accordance with 35 U.S.C. § 285; and
6. Such other and further relief as this Court may deem just and equitable.

JURY TRIAL DEMANDED

Plaintiff Global Crossing Telecommunications, Inc. hereby demands a trial by jury on all issues so triable.

Date: July 14, 2011

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