

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

Civil Action No. _____

eSOFT, INC., a Delaware corporation,

Plaintiff,

v.

BARRACUDA NETWORKS, INC., a Delaware corporation,

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT AND DEMAND FOR JURY TRIAL

Plaintiff, eSoft, Inc. (“eSoft”) for its Complaint against the Defendant Barracuda Networks, Inc. (“Defendant” or “Barracuda”), states and alleges as follows:

PARTIES AND JURISDICTION

1. This is an action for patent infringement. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. eSoft is a Delaware corporation that maintains its principal place of business at 295 Interlocken Blvd., Suite 500, Broomfield, Colorado 80021. eSoft owns all right, title and interest in, and has standing to sue for infringement of, United States Patent No. 6,961,773 entitled System and Method for Managing Application Service Providers (the “773 Patent”). The ‘773 Patent is attached hereto as Exhibit “A” to this Complaint and by this reference incorporated herein.

3. Barracuda Networks, Inc. (“Barracuda”) is incorporated under the laws of the state of Delaware. Barracuda markets computer products and services throughout the United States, including the state of Colorado.

4. This Court has personal jurisdiction over the Defendant because Defendant's wrongful conduct has and is occurring in interstate commerce within the District of Colorado.

5. Upon information and belief, Barracuda regularly conducts and solicits business in the state of Colorado, and engages in other persistent courses of action and derives revenue from goods and services supplied into the state of Colorado and/or used within the state of Colorado.

6. Barracuda expected or should have reasonably expected its conduct as described above to have consequences in the state of Colorado.

7. Venue is proper before this Court under 28 U.S.C. §§ 1391(b) and 1400(b) because Defendant transacts business within this District and because Defendant's wrongful conduct has occurred and is occurring in interstate commerce within the District of Colorado.

GENERAL ALLEGATIONS

8. eSoft incorporates by reference the allegations contained in the previous paragraphs as if fully repeated and restated herein.

9. The United States Government has duly and legally issued the '773 Patent for a System and Method for Managing Application Service Providers to Hartman, et al. on November 1, 2005. The '773 Patent remains valid and enforceable.

10. The '773 Patent was assigned to eSoft. eSoft is the lawful owner of the '773 Patent, and has had the right to sue and to recover for any and all infringements of the '773 Patent.

CLAIM

11. eSoft incorporates by reference the allegations contained in the previous paragraphs as if fully repeated and restated herein.

12. Upon information and belief, Barracuda has been and is infringing, actively induced the infringement of, and/or contributorily infringed the '773 Patent within the United States, including without limitation, through advertising, marketing, selling and/or offering to sell products and services, and products to facilitate such services, both within and outside the state of Colorado, all of which infringe the '773 Patent.

13. Upon information and belief, Barracuda has therefore infringed, actively induced the infringement of and/or contributorily infringed the '773 Patent within the state of Colorado and within the United States by advertising, marketing, selling and/or offering to sell such infringing products and services, and that its infringement, active inducement of infringement and/or contributory infringement of the '773 Patent has been willful and will continue unless rectified by this Court.

14. Upon information and belief, eSoft has been and will continue to be damaged by Barracuda's infringing activities, in an amount to be proven at trial and in a manner that cannot be fully measured or compensated in economic terms for which there is no adequate remedy at law.

15. Barracuda's wrongful acts have damaged, and will continue to damage, eSoft irreparably, and eSoft has no adequate remedy at law for those wrongs and injuries. The damages to eSoft include harm to it and its products, goodwill and reputation in the marketplace that money cannot compensate. In addition to its actual damages, eSoft is therefore entitled to injunctive relief restraining and enjoining Barracuda and its officers, agents, servants, employees, and those persons in active concert or participation with them, from infringing the '773 Patent, including without limitation, restraining and enjoining the advertising, marketing, selling and/or offering for sale of infringing products and services that infringe the '773 Patent within the United States, including the state of Colorado.

PRAYER FOR RELIEF

WHEREFORE, eSoft prays for judgment against Barracuda as follows:

1. That Barracuda has willfully infringed, actively induced the infringement of and/or knowingly contributorily infringed the '773 Patent;
2. That an accounting be had for the damages caused eSoft by the infringing activities of Barracuda, and that such damages include damages for lost profits and/or a reasonable royalty, which sums should be trebled pursuant to 35 U.S.C. § 284, with interest thereon, be awarded to eSoft;
3. That eSoft be granted permanent injunctive relief restraining and enjoining Barracuda and its officers, agents, servants, employees, and those persons in active concert or participation with them, from infringing the '773 Patent, including without limitation, restraining and enjoining the advertising, marketing, selling and/or offering for sale of the infringing products and services within the United States;
4. That eSoft be granted further injunctive relief directing Barracuda to recall all examples of infringing products and services which it has sold within the United States which infringe the '773 Patent to the extent possible and also to provide eSoft with names and contact information for all persons who purchased any infringing products and services;
5. That eSoft be awarded its attorneys' fees, costs and expenses in this action pursuant to 35 U.S.C. § 285; and
6. That eSoft be awarded such further relief as the Court may deem equitable and just.

JURY TRIAL DEMAND

eSoft hereby demands a trial by jury of all issues so triable.

DATED this 13th day of March, 2006.

eSOFT, INC., Plaintiff

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