

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

TIERRA TELECOM, INC.,

Plaintiff,

v.

Civil Action No. 1:10-cv-0095
(TSE/JFA)

LEVEL 3 COMMUNICATIONS, INC.; LEVEL
3 COMMUNICATIONS, LLC; GLOBAL
CROSSING TELECOMMUNICATIONS, INC.;
and QWEST COMMUNICATIONS
COMPANY, LLC,

JURY DEMANDED

Defendants.

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Tierra Telecom, Inc. files this First Amended Complaint for Patent Infringement against Defendants Level 3 Communications, Inc.; Level 3 Communications LLC; Global Crossing Telecommunications, Inc.; and Qwest Communications Company, LLC, and alleges as follows:

THE PARTIES

1. Tierra Telecom, Inc. ("Tierra Telecom") is a California corporation having its principal place of business at 5425 Oberlin Drive, Suite 100, San Diego, California 92121.
2. Level 3 Communications, Inc. is a Delaware corporation having its principal place of business at 1025 Eldorado Boulevard, Broomfield, Colorado 80021.
3. Level 3 Communications, LLC is a Delaware limited liability company having its principal place of business at 1025 Eldorado Boulevard, Broomfield, Colorado 80021.

4. Global Crossing Telecommunications, Inc. (“Global Crossing”) is a Michigan corporation with its principal place of business at 1080 Pittsford Victor Road, Pittsford, New York 14534.

5. Qwest Communications Company, LLC, formerly known as Qwest Communications Corporation, is a Delaware limited liability company having its principal place of business at 1801 California Street, Denver, Colorado 80202.

JURISDICTION AND VENUE

6. This is a claim for patent infringement and arises under the laws of the United States, Title 35 of the United States Code.

7. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Level 3 Communications, Inc. and Level 3 Communications, LLC (collectively “Level 3”) because Level 3 maintains places of business within the Eastern District of Virginia, including, but not limited to, a location at 2300 Corporate Park Drive, Herndon, Virginia 20171. Moreover, upon information and belief, Level 3 has committed acts within the Eastern District of Virginia giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over Level 3 would not offend traditional notions of fair play and substantial justice.

9. This Court has personal jurisdiction over Global Crossing because Global Crossing maintains places of business within the Eastern District of Virginia, including, but not limited to, a location at 12010 Sunset Hills Road, 4th Floor, Reston, Virginia 20190. Moreover, upon information and belief, Global Crossing has committed acts within the Eastern District of Virginia giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over Global Crossing would not offend traditional notions of fair play and substantial justice.

10. This Court has personal jurisdiction over Qwest Communications Company, LLC (“Qwest”) because Qwest maintains places of business within the Eastern District of Virginia, including, but not limited to, a location at 22810 International Drive, Sterling, Virginia 20166. Moreover, upon information and belief, Qwest has committed acts within the Eastern District of Virginia giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over Qwest would not offend traditional notions of fair play and substantial justice.

11. Venue is proper in the Eastern District of Virginia pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b), because Level 3, Global Crossing, and Qwest have committed acts of direct infringement in the Eastern District of Virginia and have transacted business in the Eastern District of Virginia.

THE PATENT-IN-SUIT

12. Tierra Telecom owns and has standing to sue for infringement of United States Patent No. 6,907,000 (“the ’000 Patent”) (attached as Exhibit A), entitled “Advanced Packet Transfer with Integrated Channel Monitoring.”

13. The ’000 Patent was duly and legally issued by the United States Patent and Trademark Office on June 14, 2005.

COUNT ONE LEVEL 3’S INFRINGEMENT OF THE PATENT-IN-SUIT

14. Tierra Telecom realleges and incorporates by reference paragraphs 1-14 above.

15. Upon information and belief, Level 3 has made, used, offered to sell, sold, and/or imported and continues to make, use, offer to sell, sell, and/or import voice over internet protocol (“VOIP”) products and services and other related products and services in the United States.

16. Upon information and belief, Level 3 has infringed one or more claims of the ’000 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering to sell, selling, and/or importing VOIP products and services, including but not limited to Level 3® Enterprise IP

Trunking, Level 3® International Voice Termination, Level 3® Local Inbound, Level 3® VoIP Enhanced Local, Level 3 Toll-Free, and Level 3® Voice Termination Service, that incorporate the claimed invention throughout the United States, including in this judicial district.

Specifically, upon information and belief, Level 3's efforts to optimize its VOIP service by improving availability, reducing latency, and minimizing packet loss infringes one or more claims of the '000 Patent in violation of 35 U.S.C. § 271(a).

17. Upon information and belief, Level 3 will continue its infringing acts unless restrained from doing so by this Court.

18. Tierra Telecom has been damaged by the infringing acts of Level 3.

COUNT TWO
GLOBAL CROSSING'S INFRINGEMENT OF THE PATENT-IN-SUIT

19. Tierra Telecom realleges and incorporates by reference paragraphs 1-19 above.

20. Upon information and belief, Global Crossing has made, used, offered to sell, sold, and/or imported and continues to make, use, offer to sell, sell, and/or import VOIP products and services and other related products and services in the United States.

21. Upon information and belief, Global Crossing has infringed one or more claims of the '000 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering to sell, selling, and/or importing VOIP products and services, including but not limited to Global Crossing VoIP On-Net Plus™, Global Crossing VoIP Outbound™, Global Crossing VoIP Toll Free™, Global Crossing VoIP Local Service™, Global Crossing VoIP Toll Free Transport™, and Global Crossing Carrier VoIP Enterprise Connect™, that incorporate the claimed invention throughout the United States, including in this judicial district. Specifically, upon information and belief, Global Crossing's use of traffic engineering and quality of service in order to optimize the performance metrics of its VOIP network infringes one or more claims of the '000 Patent in violation of 35 U.S.C. § 271(a).

22. Upon information and belief, Global Crossing will continue its infringing acts unless restrained from doing so by this Court.

23. Tierra Telecom has been damaged by the infringing acts of Global Crossing.

COUNT THREE
QWEST'S INFRINGEMENT OF THE PATENT-IN-SUIT

24. Tierra Telecom realleges and incorporates by reference paragraphs 1-24 above.

25. Upon information and belief, Qwest has made, used, offered to sell, sold, and/or imported and continues to make, use, offer to sell, sell, and/or import VOIP products and services and other related products and services in the United States.

26. Upon information and belief, Qwest has infringed one or more claims of the '000 Patent in violation of 35 U.S.C. § 271(a) by making, using, offering to sell, selling, and/or importing VOIP products and services, including but not limited to Qwest® IP Voice 1+ Termination, Qwest® IP Voice 8XX Origination, and Qwest's Voice Over IP Transport Services, that incorporate the claimed invention throughout the United States, including in this judicial district. Specifically, upon information and belief, Qwest's use of "24x7x365 network monitoring and management" to provide quality and service levels in its VOIP network comparable to traditional telephone networks infringes one or more claims of the '000 Patent in violation of 35 U.S.C. § 271(a).

27. Upon information and belief, Qwest will continue its infringing acts unless restrained from doing so by this Court.

28. Tierra Telecom has been damaged by the infringing acts of Qwest.

PRAYER FOR RELIEF

WHEREFORE, Tierra Telecom demands judgment against Level 3, Global Crossing, and Qwest, including their affiliates, officers, agents, servants, employees, and all persons in active concert or participation with them, as follows:

A. A permanent injunction prohibiting Level 3, Global Crossing, and Qwest from further acts of infringement of the '000 Patent;

B. An award to Tierra Telecom of such damages under 35 U.S.C. § 284 as it shall prove against Level 3, Global Crossing, and Qwest for infringement of the '000 Patent, together with pre-judgment and post-judgment interest;

C. An award to Tierra Telecom of the costs of this action and its reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and

D. Such other and further relief as this Court may deem just and appropriate.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Tierra Telecom demands a trial by jury.

Respectfully submitted,

Date: March 15, 2010

/s/ Coke Morgan Stewart
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Attorneys for Tierra Telecom, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2010, I will electronically file the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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