

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

FENNER INVESTMENTS, LTD.	§	
	§	
PLAINTIFF,	§	
	§	
V.	§	CIVIL ACTION NO. 08-CV-00061
	§	
3COM CORPORATION,	§	JURY TRIAL
FOUNDRY NETWORKS, INC.,	§	
EXTREME NETWORKS, INC.,	§	
NETGEAR INC.,	§	
ZYXEL COMMUNICATIONS, INC.,	§	
D-LINK SYSTEMS, INC.,	§	
SMC NETWORKS, INC.,	§	
TELLABS, INC.	§	
TELLABS NORTH AMERICA, INC.,	§	
AND	§	
ENTERASYS NETWORKS, INC.	§	
DEFENDANTS.		

PLAINTIFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Fenner Investments, Ltd. (“Fenner”) for its Second Amended Complaint against Defendants 3Com Corporation (“3Com”), Foundry Networks, Inc. (“Foundry”), Extreme Networks, Inc. (“Extreme”), NETGEAR Inc. (“NETGEAR”), ZyXEL Communications, Inc. (“ZyXEL”), D-Link Systems, Inc. (“D-Link”), SMC Networks, Inc. (“SMC”), Tellabs, Inc. (“Tellabs”), Tellabs North America, Inc. (“Tellabs NA”) and Enterasys Networks, Inc. (“Enterasys”) alleges as follows:

THE PARTIES

1. Fenner is a limited partnership duly organized and existing under the laws of the State of Texas, having a principal place of business in Richardson, Texas.

2. 3Com Corporation is a corporation duly organized and existing under the laws of the State of Delaware, having a principal place of business at 350 Campus Drive, Marlborough, MA 01752-3064. 3Com has an agent for service of process as: CT Corporation System, 350 North St. Paul St., Dallas, TX 75201.

3. Foundry Networks, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having a principal place of business at 4980 Great America Pkwy, Santa Clara, CA 95054. Foundry has an agent for service of process as: LexisNexis Document Solutions, Inc., 701 Brazos Street, Suite 1050, Austin, TX 78701.

4. Extreme Networks, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having a principal place of business at 3585 Monroe Street, Santa Clara, CA 95051. Extreme has an agent for service of process as: CT Corporation System, 350 N. St. Paul Street, Dallas, TX 75201.

5. NETGEAR Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having a principal place of business at 4500 Great America Pkwy, Santa Clara, CA 95054. NETGEAR has an agent for service of process as: CT Corporation System, 818 West Seventh St., Los Angeles, CA 90017.

6. ZyXEL Communications, Inc. is a corporation duly organized and existing under the laws of the State of California, having a principal place of business at 1130 North Miller Street, Anaheim, CA 92806-2001. ZyXEL has an agent for service of process as: Jeremy Chou, 1130 N. Miller St., Anaheim, CA 92806-2001.

7. D-Link Systems, Inc. is a corporation duly organized and existing under the laws of the State of California, having a principal place of business at 17595 Mt. Herrmann St., Fountain Valley, CA 92708. D-Link has an agent for service of process as: Steven Joe, 17595

Mt. Herrmann St., Fountain Valley, CA 92708.

8. SMC Networks, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having a principal place of business at 20 Mason Street, Irvine, CA 92618. SMC has an agent for service of process as: Lane Ruoff, 5 Northgrove, Irvine, CA 92604.

9. Tellabs, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having a principal place of business at One Tellabs Center, 1415 West Diehl Road, Naperville, IL 60563. Tellabs has an agent for service of process as: CT Corporation System, 208 South La Salle Street, Suite 814, Chicago, IL 60604.

10. Tellabs North America, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having a principal place of business at 1415 W. Diehl Road MS #119, Naperville, IL 60563. Tellabs NA has an agent for service of process as: CT Corporation System, 350 N. St. Paul St., Dallas, TX 75201.

11. Enterasys Networks, Inc. is a corporation duly organized and existing under the laws of the State of Delaware, having a principal place of business at 50 Minuteman Road, Andover, MA 01810. Enterasys has an agent for service of process as: CT Corporation System, 350 N. St. Paul St., Dallas, TX 75201.

JURISDICTION

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.* The Court has personal jurisdiction over Defendants in that each of them has committed acts within Texas and this judicial district giving rise to this action and each of Defendants has established minimum contacts with the forum such that the exercise of

jurisdiction over each of Defendants would not offend traditional notions of fair play and substantial justice.

VENUE

13. Each of Defendants has committed acts within this judicial district giving rise to this action and does business in this district, including offering for sale, making sales and providing service and support to their respective customers in this district. Acts of infringement occur in this district. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) (c) and 1400(b).

INFRINGEMENT OF U.S. PATENT NO. 7,145,906

14. On December 5, 2006, United States Patent No. 7,145,906 (the '906 Patent) was duly and legally issued for an invention entitled "Packet Switching Node." A copy of the '906 Patent is attached as Exhibit A. A copy of the certificate of correction for the '906 Patent is attached as Exhibit B, and a copy of claims of the '906 Patent incorporating the corrections reflected on the certificate of correction is attached as Exhibit C.

15. Fenner is wholly owned by members of the Fenner family. Peter R. Fenner is the sole inventor of the '906 Patent assigned to Fenner. The '906 Patent relates to Mr. Fenner's work in satisfying the 1989 SBIR Program Topic Number N89-037 for the United States Navy. The invention was disclosed to the United States Navy in a submission entitled: "An addressing technique for U.S. Navy traffic in a multimedia environment."

16. The '906 Patent was assigned to Fenner Investments, Ltd., and Fenner Investments, Ltd. continues to hold all rights and interests in the '906 Patent.

17. 3Com has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting

infringement of the '906 Patent. 3Com's products, including but not limited to, 3Com switch 4500 26-Port, Switch 4500 50-Port, Switch 4500 PWR 26-Port and Switch PWR 50-Port, infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

18. Foundry has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. Foundry's products, including but not limited to, FastIron X-Series Switches, infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

19. Extreme has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. Extreme's products, including but not limited to, Extreme Ethernet Switches (250E Series), infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

20. NETGEAR has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. NETGEAR's products, including but not limited to, NETGEAR Ethernet Switches (7300s Series), infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

21. ZyxEL has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. ZyxEL's products, including but not limited to, ZyxEL Ethernet Switches (ES-4024A Series), infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

22. D-Link has in the past and is now engaging, and will in the future continue to

engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. D-Link's products, including but not limited to, D-Link Ethernet Switches (DES-3800 Series), infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

23. SMC has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. SMC's products, including but not limited to, SMC Ethernet Switches (SMC6724L3), infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

24. Tellabs has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. Tellabs' products, including but not limited to, Tellabs 8606, infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

25. Tellabs NA has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. Tellabs NA's products, including but not limited to, Tellabs 8606, infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

26. Enterasys has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '906 Patent. Enterasys' products, including but not limited to, Enterasys I Series, infringe at least claims 9, 10, 19, 20, 29 and 30 of the '906 Patent.

27. Each of Defendants' acts of infringement has caused damage to Fenner, and Fenner is entitled to recover from each Defendant the damages sustained by Fenner as a result of their individual wrongful acts in an amount subject to proof at trial. Each of Defendants'

infringement of Fenner's exclusive rights under the '906 Patent will continue to damage Fenner's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

INFRINGEMENT OF U.S. PATENT NO. 5,842,224

28. On November 24, 1998, United States Patent No. 5,842,224 ("the '224 Patent") was duly and legally issued for an invention entitled "Method and Apparatus for Source Filtering Data Packets Between Networks of Differing Media." A copy of the '224 Patent is attached as Exhibit D.

29. Fenner is wholly owned by members of the Fenner family. Peter R. Fenner is the sole inventor of the '224 Patent assigned to Fenner. The '224 Patent relates to Mr. Fenner's work in satisfying the 1989 SBIR Program Topic Number N89-037 for the United States Navy. The invention was disclosed to the United States Navy in a submission entitled: "An addressing technique for U.S. Navy traffic in a multimedia environment."

30. The '224 Patent was assigned to Fenner Investments, Ltd., and Fenner Investments, Ltd. continues to hold all rights and interests in the '224 Patent.

31. 3Com has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '224 Patent. 3Com's products, including but not limited to, 3Com switch 4500 26-Port, Switch 4500 50-Port, Switch 4500 PWR 26-Port and Switch PWR 50-Port, infringe at least claims 3 and 8 of the '224 Patent.

32. Foundry has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '224 Patent. Foundry's products, including but not limited to, FastIron X-

Series Switches, infringe at least claims 3 and 8 of the '224 Patent.

33. Extreme has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '224 Patent. Extreme's products, including but not limited to, Extreme Ethernet Switches (250E Series), infringe at least claims 3 and 8 of the '224 Patent.

34. NETGEAR has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '224 Patent. NETGEAR's products, including but not limited to, NETGEAR Ethernet Switches (7300s Series), infringe at least claims 3 and 8 of the '224 Patent.

35. ZyxEL has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '224 Patent. ZyxEL's products, including but not limited to, ZyxEL Ethernet Switches (ES-4024A Series), infringe at least claims 3 and 8 of the '224 Patent.

36. D-Link has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '224 Patent. D-Link's products, including but not limited to, D-Link Ethernet Switches (DES-3800 Series), infringe at least claims 3 and 8 of the '224 Patent.

37. SMC has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting infringement of the '224 Patent. SMC's products, including but not limited to, SMC Ethernet Switches (SMC6724L3), infringe at least claims 3 and 8 of the '224 Patent.

38. Enterasys has in the past and is now engaging, and will in the future continue to engage in unauthorized conduct and activities that violate 35 U.S.C. § 271 *et seq* constituting

infringement of the '224 Patent. Enterasys' products, including but not limited to, Enterasys I Series, infringe at least claims 3 and 8 of the '224 Patent.

39. Each of Defendants' acts of infringement has caused damage to Fenner, and Fenner is entitled to recover from each Defendant the damages sustained by Fenner as a result of their individual wrongful acts in an amount subject to proof at trial. Each of Defendants' infringement of Fenner's exclusive rights under the '224 Patent will continue to damage Fenner's business, causing irreparable harm, for which there is no adequate remedy at law, unless it is enjoined by this Court.

40. Upon information and belief, at least 3Com's and Foundry's infringement of the '224 Patent is willful and deliberate, entitling Fenner to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

41. Pursuant to Federal Rule of Civil Procedure 38, Fenner demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Fenner prays for judgment and seeks relief against each of the Defendants as follows:

- (a) For judgment that the '906 Patent has been and will continue to be infringed by Defendants 3Com, Foundry, Extreme, NETGEAR, ZyXEL, D-Link, SMC, Tellabs, Tellabs NA and Enterasys.
- (b) For judgment that the '224 Patent has been and will continue to be infringed by Defendants 3Com, Foundry, Extreme, NETGEAR, ZyXEL, D-Link, SMC and Enterasys.
- (c) For an accounting of all damages sustained by Fenner as the result of the acts of

infringement by each Defendant;

- (d) For preliminary and permanent injunctions enjoining the aforesaid acts of infringement by each Defendant, their officers, agents, servants, employees, subsidiaries and attorneys, and those persons acting in concert with them, including related individuals and entities, customers, representatives, OEMS, dealers, distributors;
- (e) For actual damages together with prejudgment interest;
- (f) For enhanced damages pursuant to 35 U.S.C. § 284 as to Foundry and 3Com;
- (g) For an award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law;
- (h) For all costs of suit; and
- (i) For such other and further relief as the Court may deem just and proper.

Respectfully submitted this 8th day of May, 2008,

/s/ Robert M. Chiaviello, Jr.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that this document was served via the Court's CM/ECF system in accordance with Local Rule CV-5(a)(3) on May 8, 2008, upon all counsel of record.

/s/ Robert M. Chiaviello, Jr. _____
Robert M. Chiaviello, Jr.