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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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11 COMCAST CABLE COMMUNICATIONS,
LLC, a Delaware Company,

12 Plaintiff,

13 v.

14 FINISAR CORPORATION, a Delaware
15 Corporation,

16 Defendant.

Case No. C-06-4206 EDL

**AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT OF
PATENT INVALIDITY AND
NONINFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Comcast Cable Communications, LLC (“Plaintiff”), alleges as follows:

2 **I. JURISDICTION AND VENUE**

3 1. This action arises under the patent laws of the United States, 35 U.S.C. § 1, et seq.
4 This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) and the
5 Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6 2. Venue is proper in this district under 28 U.S.C. §1391(b) and (c) because a
7 substantial part of the events or omissions giving rise to the claims occurred in this district, a
8 substantial part of the property that is the subject of the action is situated in this district, and the
9 defendant maintains its principal place of business in this district.

10 **II. INTRADISTRICT ASSIGNMENT**

11 3. This is a patent action subject to district-wide assignment under Local Rule 3-
12 2(c).

13 **III. THE PARTIES**

14 4. Comcast Cable Communications, LLC (“Comcast”) is, and at all times mentioned
15 herein was, a company organized and existing under the laws of Delaware, with a principal place
16 of business at 1500 Market Street, Philadelphia, Pennsylvania. Comcast is a subsidiary of
17 Comcast Corporation and is the nation’s leading provider of cable, entertainment, and
18 communications products and services. Comcast serves 21.5 million cable subscribers, including
19 subscribers located within this judicial district.

20 5. On information and belief, Defendant Finisar Corporation (“Defendant”) is, and at
21 all times mentioned herein was, a corporation organized and existing under the laws of
22 Delaware, with a principal place of business at 1308 Moffett Park Drive, Sunnyvale, California.
23 Defendant is a provider of fiber optic subsystems and network performance test systems.

24 6. Plaintiff is informed and believes that Defendant is engaged in the regular and
25 systematic transaction of business in this judicial district through, *inter alia*, the distribution and
26 sale of its products in this judicial district and the maintenance of its corporate headquarters in
27 this judicial district.
28

IV. FACTUAL BACKGROUND

A. Cable Technology

7. Cable television systems distribute television signals and other services through broadband coaxial or fiber optic cable. Through its predecessors, Comcast has developed, managed and operated broadband cable networks since 1963.

8. Defendant is the purported assignee and record owner of U.S. Patent No. 5,404,505 (“the ‘505 patent”), entitled System for Scheduling Transmission of Indexed and Requested Database Tiers on Demand at Varying Repetition Rates. A copy of the ‘505 patent is attached as Exhibit A.

B. Justiciable Controversy

9. Defendant has asserted to Plaintiff that Plaintiff’s manufacture or sale of certain equipment and methods infringe the ‘505 patent. These assertions include 3 letters, copies of which are attached here as Exhibits B, C and D. Defendant has indicated that it will take steps to enforce its patent against Plaintiff, and sued DirecTV Group for infringement of this same patent. Defendant noted the fact of a jury verdict against DirecTV Group in its most recent correspondence to Comcast.

10. Plaintiff denies that any of its activities or products infringe any valid claim of any of the ‘505 patent or any other valid, enforceable patent, if any, purportedly owned by Defendant.

11. As a result of Defendant’s actions, Plaintiff has a reasonable apprehension that Defendant will commence litigation against it on the ‘505 patent.

12. There is substantial, continuing and justiciable controversy between Plaintiff and Defendant as to Defendant’s right to threaten or maintain suit for infringement of the ‘505 patent, as to the validity, scope and enforceability thereof, and as to whether Plaintiff infringes any valid and enforceable claims of the ‘505 patent.

V. CAUSES OF ACTION

**FIRST CAUSE OF ACTION
(For Declaratory Judgment of Noninfringement)**

13. Plaintiff incorporates by reference as though set forth in full here paragraphs 1 through 12, inclusive.

14. Plaintiff alleges that its activities do not directly infringe, do not induce infringement, and do not contributorily infringe any valid and enforceable claims, if any, of the '505 patent.

**SECOND CAUSE OF ACTION
(For Declaratory Judgment of Noninfringement)**

15. Plaintiff incorporates by reference as though set forth in full here paragraphs 1 through 14, inclusive.

16. By reason of the proceedings in the United States Patent and Trademark Office during the prosecution of the application that resulted in the issuance of the '505 patent, as shown by the file history thereof, and related patent applications and proceedings, Defendant is estopped from claiming for the '505 patent a construction that would cause it to cover any activities of Plaintiff.

**THIRD CAUSE OF ACTION
(For Declaratory Judgment of Invalidity)**

17. Plaintiff incorporates by reference as though set forth in full here paragraphs 1 through 16, inclusive.

18. Plaintiff alleges on information and belief that the '505 patent is invalid. In view of the prior art, and further in view of basic deficiencies in the '505 patent, it fails to satisfy one or more of the provisions for patentability set forth in Title 35, Part II, United States Code, particularly §§ 101, 102, 103 112, 116 and 132, and the rules, regulations, and law pertaining thereto.

VI. REQUEST FOR RELIEF

WHEREFORE Plaintiff prays for relief against Defendant as follows:

1. For a declaratory judgment that:

a. Plaintiff infringes no valid and enforceable claim of the '505 patent.

b. The '505 patent is invalid; and

c. Defendant, and those acting in concern with it or acting with knowledge of the judgment herein, are without right or authority to threaten or maintain suit against Plaintiff, or users of Plaintiff's products or services, for alleged infringement of the '505 patent.

2. For an injunction prohibiting Defendant, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice thereof, from initiating infringement litigation against, and from threatening, Plaintiff or purchasers or users of Plaintiff's products or services with infringement litigation or charging any of them verbally or in writing with infringement of the '505 patent, or representing to any of them that infringement has occurred, because of any activities of Plaintiff.

3. For its costs and reasonable attorneys' fees incurred herein.

4. For such other and further relief as the Court may deem appropriate.

VII. JURY DEMAND

Plaintiff requests a jury trial on all issues so triable.

Dated: November 30, 2006

KEKER & VAN NEST, LLP

By: /s/ David J. Silbert

DAVID J. SILBERT
Attorneys for Plaintiff
COMCAST CABLE
COMMUNICATIONS, LLC

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Comcast Holdings Corporation owns 10% or more of Comcast Cable Communications, LLC. Comcast Holdings Corporation is owned by Comcast Corporation, a publicly traded company. No corporation owns 10% or more of the stock of Comcast Corporation.

Dated: November 30, 2006

By: /s/ David J. Silbert