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9 Attorneys for Plaintiff and Counterclaimant,
10 PCTEL, INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 _____)
15 PCTEL, INC., a Delaware Corporation,) No. C03-0982 MJJ
16 Plaintiff,) E-filing
17 vs.) **SECOND AMENDED COMPLAINT**
18 3COM CORPORATION, a Delaware) **FOR PATENT INFRINGEMENT**
Corporation,) **DEMAND FOR JURY TRIAL**
19 Defendant.) C 03-2471 MJJ
20) C 03-2710 MJJ
21) C 03-2474 MJJ

21 This Document Relates to:) No. C03-2474 MJJ
22)
23 PCTEL, INC., a Delaware corporation,)
24 Plaintiff,)
25 vs.)
26 AGERE SYSTEMS, INC., et al.)
27 Defendants.)
28 _____)

1 Plaintiff PCTEL, Inc. (“PCTEL”) complains of Defendant Agere Systems Inc. (“Agere”)
2 and Lucent Technologies Inc. (“Lucent”) as follows:

3 **THE PARTIES**

4 1. Plaintiff PCTEL is a Delaware corporation qualified to do business in California.

5 2. PCTEL is informed and believes that Defendant Agere is a Delaware corporation
6 qualified to do business in California, with a regular and established place of business in Santa
7 Clara, California.

8 3. PCTEL is informed and believes that Defendant Lucent is a Delaware corporation
9 qualified to do business in California, with a regular and established place of business in New
10 Jersey.

11 **JURISDICTION AND VENUE**

12 4. This action arises under the patent laws of the United States, Title 35 of the United
13 States Code. Agere and Lucent have and Agere continues to commit, actively induce, and
14 contribute to acts of patent infringement throughout the United States. This court has subject
15 matter jurisdiction of this action pursuant to 28 U.S.C. §§ 1331 (federal question) and 1338(a)
16 (patents).

17 5. Agere imports, uses, offers for sale and sells products accused of infringement – and
18 induces and contributes to the direct infringement of others – throughout the United States,
19 including in this district, purposefully availing itself of the privilege of conducting activities within
20 this state and district. Thus, this Court has personal jurisdiction over Agere.

21 6. Lucent imported, used, offered for sale and sold products accused of infringement –
22 and induced and contributed to the direct infringement of others – throughout the United States,
23 including in this district, purposefully availing itself of the privilege of conducting activities within
24 this state and district. Thus, this Court has personal jurisdiction over Lucent.

25 7. Venue in this judicial district is proper under the provisions of 28 U.S.C. §§ 1391
26 and 1400.

INTRADISTRICT ASSIGNMENT

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2 8. As this action involves claims for patent infringement, pursuant to Local Rule
3 3.2(c), Plaintiff has not attempted to assign this action to a particular division.

4 **FIRST CLAIM FOR RELIEF**

5 (Infringement of the '561 Patent)

6 9. PCTEL incorporates paragraphs 1-7 herein by this reference.

7 10. PCTEL is the owner of United States Patent No. 4,841,561, entitled, "Operating
8 default group selectable data communication equipment" (the "'561 Patent"). The '561 Patent duly
9 and legally issued on June 20, 1989. A true and correct copy of the '561 Patent is attached to this
10 Complaint as Exhibit A.

11 11. Agere has been and is: (a) directly infringing the '561 Patent throughout the United
12 States, by making, using, selling, offering for sale, and/or importing infringing devices that are
13 covered by the '561 Patent in violation of 35 U.S.C. § 271(a); (b) contributorily infringing the '561
14 Patent by offering to sell or selling within the United States or importing into (35 U.S.C. § 271(c),
15 (g)) or from (35 U.S.C. § 271(f)) the United States a component of a patented machine,
16 manufacturer, combination or composition, or a material or apparatus for use in practicing a
17 patented process, constituting a material part of the invention of the '561 Patent, knowing the same
18 to be especially made or especially adapted for use in an infringement of the '561 Patent, and not a
19 staple article or commodity of commerce suitable for substantial noninfringing use; and/or (c)
20 actively inducing infringement of the '561 Patent throughout the United States, by inducing others
21 to make, use, sell, offer for sale, and/or import infringing devices that are covered by the '561
22 Patent in violation of 35 U.S.C. § 271(b).

23 12. Agere's infringement of the '561 Patent is willful, wanton, deliberate, without
24 license, and with full knowledge of PCTEL's rights.

25 13. Lucent has: (a) directly infringed the '561 Patent throughout the United States, by
26 making, using, selling, offering for sale, and/or importing infringing devices that are covered by the
27 '561 Patent in violation of 35 U.S.C. § 271(a); (b) contributorily infringed the '561 Patent by
28 offering to sell or selling within the United States or importing into (35 U.S.C. § 271(c), (g)) or

1 from (35 U.S.C. § 271(f)) the United States a component of a patented machine, manufacturer,
2 combination or composition, or a material or apparatus for use in practicing a patented process,
3 constituting a material part of the invention of the '561 Patent, knowing the same to be especially
4 made or especially adapted for use in an infringement of the '561 Patent, and not a staple article or
5 commodity of commerce suitable for substantial noninfringing use; and/or (c) actively induced
6 infringement of the '561 Patent throughout the United States, by inducing others to make, use, sell,
7 offer for sale, and/or import infringing devices that are covered by the '561 Patent in violation of 35
8 U.S.C. § 271(b).

9 14. Lucent's infringement of the '561 Patent was willful, wanton, deliberate, without
10 license, and with full knowledge of PCTEL's rights.

11 15. At all relevant times hereto, PCTEL has complied with the notice and marking
12 requirements of 35 U.S.C. § 287(a). PCTEL is informed and believes that PCTEL's predecessor in
13 interest complied with the notice and marking requirements of 35 U.S.C. § 287(a).

14 16. Agere and Lucent's infringement of the '561 Patent has damaged PCTEL in an
15 amount to be proven at trial.

16 17. Unless restrained and enjoined by this Court, Agere will continue and Lucent may
17 resume their acts of infringement and the resulting damage to PCTEL will be substantial,
18 continuing, and irreparable.

19 WHEREFORE, Plaintiff prays for judgment as set forth in the prayer for relief.

20 **SECOND CLAIM FOR RELIEF**

21 (Infringement of the '305 Patent)

22 18. PCTEL incorporates paragraphs 1-7 herein by this reference.

23 19. PCTEL is the owner of United States Patent No. 5,787,305, entitled, "Host signal
24 processing modem using a software simulation of a UART" (the "'305 Patent"). The '305 Patent
25 duly and legally issued on July 28, 1998. A true and correct copy of the '305 Patent is attached to
26 this Complaint as Exhibit B.

27 20. Agere has been and is: (a) directly infringing the '305 Patent throughout the United
28 States, by making, using, selling, offering for sale, and/or importing infringing devices that are

1 covered by the '305 Patent in violation of 35 U.S.C. § 271(a); (b) contributorily infringing the '305
2 Patent by offering to sell or selling within the United States or importing into (35 U.S.C. § 271(c),
3 (g)) or from (35 U.S.C. § 271(f)) the United States a component of a patented machine,
4 manufacturer, combination or composition, or a material or apparatus for use in practicing a
5 patented process, constituting a material part of the invention of the '305 Patent, knowing the same
6 to be especially made or especially adapted for use in an infringement of the '305 Patent, and not a
7 staple article or commodity of commerce suitable for substantial noninfringing use; and/or (c)
8 actively inducing infringement of the '305 Patent throughout the United States, by inducing others
9 to make, use, sell, offer for sale, and/or import infringing devices that are covered by the '305
10 Patent in violation of 35 U.S.C. § 271(b).

11 21. Agere's infringement of the '305 Patent is willful, wanton, deliberate, without
12 license, and with full knowledge of PCTEL's rights.

13 22. Lucent has: (a) directly infringed the '305 Patent throughout the United States, by
14 making, using, selling, offering for sale, and/or importing infringing devices that are covered by the
15 '305 Patent in violation of 35 U.S.C. § 271(a); (b) contributorily infringed the '305 Patent by
16 offering to sell or selling within the United States or importing into (35 U.S.C. § 271(c), (g)) or
17 from (35 U.S.C. § 271(f)) the United States a component of a patented machine, manufacturer,
18 combination or composition, or a material or apparatus for use in practicing a patented process,
19 constituting a material part of the invention of the '305 Patent, knowing the same to be especially
20 made or especially adapted for use in an infringement of the '305 Patent, and not a staple article or
21 commodity of commerce suitable for substantial noninfringing use; and/or (c) actively induced
22 infringement of the '305 Patent throughout the United States, by inducing others to make, use, sell,
23 offer for sale, and/or import infringing devices that are covered by the '305 Patent in violation of 35
24 U.S.C. § 271(b).

25 23. At all relevant times hereto, PCTEL has complied with the notice and marking
26 requirements of 35 U.S.C. § 287(a).

27 24. Agere and Lucent's infringement of the '305 Patent has damaged PCTEL in an
28 amount to be proven at trial.

1 offering to sell or selling within the United States or importing into (35 U.S.C. § 271(c), (g)) or
2 from (35 U.S.C. § 271(f)) the United States a component of a patented machine, manufacturer,
3 combination or composition, or a material or apparatus for use in practicing a patented process,
4 constituting a material part of the invention of the '950 Patent, knowing the same to be especially
5 made or especially adapted for use in an infringement of the '950 Patent, and not a staple article or
6 commodity of commerce suitable for substantial noninfringing use; and/or (c) actively induced
7 infringement of the '950 Patent throughout the United States, by inducing others to make, use, sell,
8 offer for sale, and/or import infringing devices that are covered by the '950 Patent in violation of 35
9 U.S.C. § 271(b).

10 31. At all relevant times hereto, PCTEL has complied with the notice and marking
11 requirements of 35 U.S.C. § 287(a).

12 32. Agere and Lucent's infringement of the '950 Patent has damaged PCTEL in an
13 amount to be proven at trial.

14 33. Unless restrained and enjoined by this Court, Agere will continue and Lucent may
15 resume their acts of infringement and the resulting damage to PCTEL will be substantial,
16 continuing, and irreparable.

17 WHEREFORE, Plaintiff prays for judgment as set forth in the prayer for relief.

18 **FOURTH CLAIM FOR RELIEF**

19 (Infringement of the '780 Patent)

20 34. PCTEL incorporates paragraphs 1-7 herein by this reference.

21 35. PCTEL is the owner of United States Patent No. 6,493,780, entitled, "Wake-up-on-
22 ring power conservation for host signal processing communication system"). The '780 Patent duly
23 and legally issued on December 10, 2002. A true and correct copy of the '780 Patent is attached to
24 this Complaint as Exhibit D.

25 36. Agere has been and is: (a) directly infringing the '780 Patent throughout the United
26 States, by making, using, selling, offering for sale, and/or importing infringing devices that are
27 covered by the '780 Patent in violation of 35 U.S.C. § 271(a); (b) contributorily infringing the '780
28 Patent by offering to sell or selling within the United States or importing into (35 U.S.C. § 271(c),

1 (g)) or from (35 U.S.C. § 271(f)) the United States a component of a patented machine,
2 manufacturer, combination or composition, or a material or apparatus for use in practicing a
3 patented process, constituting a material part of the invention of the '780 Patent, knowing the same
4 to be especially made or especially adapted for use in an infringement of the '780 Patent, and not a
5 staple article or commodity of commerce suitable for substantial noninfringing use; and/or (c)
6 actively inducing infringement of the '780 Patent throughout the United States, by inducing others
7 to make, use, sell, offer for sale, and/or import infringing devices that are covered by the '780
8 Patent in violation of 35 U.S.C. § 271(b).

9 37. Agere's infringement of the '780 Patent is willful, wanton, deliberate, without
10 license, and with full knowledge of PCTEL's rights.

11 38. At all relevant times hereto, PCTEL has complied with the notice and marking
12 requirements of 35 U.S.C. § 287(a).

13 39. Agere's infringement of the '780 Patent has damaged PCTEL in an amount to be
14 proven at trial.

15 40. Unless restrained and enjoined by this Court, Agere will continue its acts of
16 infringement and the resulting damage to PCTEL will be substantial, continuing, and irreparable.

17 WHEREFORE, Plaintiff prays for judgment as set forth in the prayer for relief.

18
19 **PRAYER FOR RELIEF**

20 PCTEL requests that this Court enter judgment that:

21 1. Agere, its officers, directors, employees, agents, licensees, servants, successors, and
22 assigns, and any and all persons acting in privity or in concert with them, be preliminary and
23 permanently restrained and enjoined from further infringement of the '561 Patent, '305 Patent, '950
24 Patent, and '780 Patent (35 U.S.C. § 283);

25 2. Damages be awarded to PCTEL against Agere in an amount adequate to
26 compensate PCTEL for Agere's infringement of the '561 Patent, '305 Patent, '950 Patent, and '780
27 Patent (35 U.S.C. § 284);

1 3. Lucent, its officers, directors, employees, agents, licensees, servants, successors,
2 and assigns, and any and all persons acting in privity or in concert with them, be preliminary and
3 permanently restrained and enjoined from further infringement of the '561 Patent, '305 Patent, and
4 '950 Patent (35 U.S.C. § 283);

5 4. Damages be awarded to PCTEL against Lucent in an amount adequate to
6 compensate PCTEL for Lucent's infringement of the '561 Patent, '305 Patent, and '950 Patent (35
7 U.S.C. § 284);

8 5. Damages be increased three times the amount found or assessed due to Defendant's
9 willful infringement (35 U.S.C. § 284);

10 6. This is an exceptional case and PCTEL be awarded its costs, expenses, and
11 disbursements in this action, including reasonable attorneys' fees (35 U.S.C. § 285);

12 7. PCTEL be awarded its costs, expenses, and disbursements in this action (Fed. R.
13 Civ. P. 54(d));

14 8. PCTEL be awarded interest on the amount of damages found, including pre-
15 judgment and post-judgment interest (35 U.S.C. § 284); and

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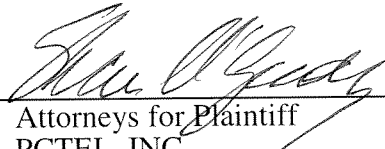
JURY DEMAND

Plaintiff demands trial by jury of all issues so triable.

Dated: November 3, 2004.

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