

IN THE UNITED STATES COURT
 FOR THE EASTERN DISTRICT OF TEXAS
 MARSHALL DIVISION

FILED - CLERK
 U.S. DISTRICT COURT
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 TEXAS - EASTERN
 BY: *[Signature]*

RED RIVER FIBER-OPTIC
 CORPORATION, INC.

Plaintiff

v.

LEVEL 3 COMMUNICATIONS, INC.
 and LEVEL 3 COMMUNICATIONS,
 L.L.C.

Defendant

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CIVIL ACTION NO.2-01cv208TJW

JURY

PLAINTIFF'S FIRST AMENDED COMPLAINT

COMES NOW Plaintiff, Red River Fiber-optic Corporation, Inc. (hereinafter "Red River"), and files this its First Amended Complaint for its claims against Defendant, Level 3 Communications, Inc. (hereinafter "Level 3") and Defendant Level 3 Communications, L.L.C., (Level 3 LLC), hereinafter collectively referred to as the "Defendants," alleging as follows:

THE PARTIES

1. Plaintiff, Red River is a corporation duly organized and existing under the laws of the State of Texas.
2. Defendant, Level 3 is a corporation duly organized and existing under the laws of the State of Delaware, with its principal place of business at 1025 Eldorado Blvd., Broomfield, Colorado 80021.
3. Defendant Level 3 LLC is a wholly-owned subsidiary of Level 3 Communications, Inc. and a limited liability company duly organized and existing under the laws of the State of Delaware, with its principal place of business at 3555 Farnam Street, Omaha, Nebraska 68131.

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JURISDICTION AND VENUE

3. This is an action arising under the Patent Laws of the United States and the laws of the State of Texas for unfair competition.
4. This court has jurisdiction under 28 U.S.C. §§ 1331 and 1338.
5. Venue properly lies in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(b).

FACTUAL BACKGROUND

6. Joseph Zelikovitz invented a packet-based fiber-optic network. A patent application was filed for Mr. Zelikovitz's invention on June 7, 1995, and this patent application issued as U.S. Patent No. 5,555,478, entitled "Fiber Optic Information Transmission System," on September 10, 1996. This patent shall be referred to hereinafter as "the '478 Patent."
7. All right, title and interest to the '478 Patent has been assigned to Red River.
8. Defendants made, operates and services a packet-based end-to-end fiber-optic network. Defendants operate their end-to-end fiber-optic network throughout the United States, including areas located in the Eastern District of Texas.

COUNT I – PATENT INFRINGEMENT

9. Red River repeats the allegations of paragraphs 1-8 as if fully set forth herein.
10. Defendants have infringed, and continue to infringe, directly and indirectly, the '478 Patent by making, using, selling, and offering for sale, in this judicial district and elsewhere, an end-to-end fiber-optic system covered by the '478 Patent, as well as providing services supported by a fiber-optic system which is covered by the '478 Patent.
11. Defendants' acts of infringement of the '478 Patent have caused, and will continue to cause, immediate and irreparable injury to Plaintiff for which Plaintiff is entitled to preliminary

and permanent injunctive relief. Defendants will continue to infringe the '478 Patent unless enjoined by this Court.

12. Defendants' acts of infringement of the '478 Patent have caused, and will continue to cause, injury to Plaintiff for which Plaintiff is entitled to relief.

13. Defendants' infringement of the '478 Patent has been, and continues to be, willful and deliberate in disregard of Plaintiff's rights under the '478 Patent.

COUNT II – UNFAIR COMPETITION

14. Plaintiff incorporates the allegations of paragraphs 1-13 as if fully set forth in this paragraph.

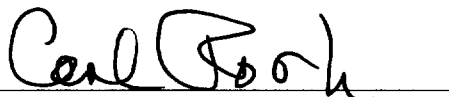
15. The acts of Defendants constitute unfair competition under the common law of the State of Texas for which the Plaintiff is entitled to relief.

WHEREFORE, Red River prays for judgment as follows:

- A. Adjudge U.S. Patent 5,555,478 to be valid, enforceable, and infringed by Defendants;
- B. That the Defendant's acts constitute unfair competition under the laws of the State of Texas;
- C. That the Defendant's acts were willful and intentional in violation of federal law and the laws of the State of Texas;
- D. Preliminarily and permanently enjoin the Defendant, and any other person or entity in concert or participation with the Defendant, from any infringing activity of Plaintiff's patent or violation of federal patent law protection, or any acts constituting unfair competition under the laws of the State of Texas;

- E. Award Plaintiff damages, and order Defendant to account to Plaintiff for damages sustained by Plaintiff as a result of each of the Defendant's infringements of the '478 Patent, with interest;
- F. Award Plaintiff the costs, expenses, and reasonable attorney's fee incurred in bringing and prosecuting this action; and
- G. Award Plaintiff increased damages for willful and deliberate acts of infringement, and such other and further relief that the Court deems just and proper.

Respectfully submitted,



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Dated: 3/11/02

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