IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:11-cv-01440-CMA-MEH

CONCATEN, INC.,

Plaintiff,

v.

DELCAN CORPORATION, INTELLIGENT NETWORKS and DELCAN TECHNOLOGIES, INC. f.k.a. and d.b.a. INTELLIGENT DEVICES, INC.

Defendants.

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND LANHAM ACT VIOLATIONS

Plaintiff, Concaten, Inc., by and through its undersigned counsel, states and alleges the following as its Complaint for Patent Infringement and for additional damages resulting from Lanham Act violations (õComplaintö) against Defendants Delcan Corporation, Intelligent Networks and Delcan Technologies, Inc. formerly known as and doing business as Intelligent Devices, Inc. All of the allegations and other factual contentions which are made on information and belief were formed after inquiry reasonable under the circumstances and are premised on the belief that the same are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

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PARTIES

- 1. Plaintiff, Concaten, Inc. (hereinafter referred to as õConcatenö and/or Plaintiff) is a State of Delaware corporation with its principal place of business located at 24918 Genesee Trail Road, Golden, Colorado 80401. Concaten owns all right, title, and interest to United States Patent Number 7,714,705 which is referred to below as the Ø05 Patent and the õConcaten Patent.ö Concaten conducts business in the District of Colorado.
- 2. On information and belief, Delcan Corporation is a State of Illinois corporation whose principal place of business located at 650 East Algonquin Road #400, Schaumburg, Illinois 60173. Delcan Corporation conducts business in the District of Colorado via its State of Colorado headquarters located at 26 West Dry Creek Circle, Suite 616, Littleton, Colorado 80120. Delcan Corporation may be served with process via its registered agent for service, the 6 ocrporation Service Companyö at 1560 Broadway, Suite 2090, Denver, Colorado 80202.
- 3. On information and belief, Intelligent Networks is either a wholly-owned subsidiary of Delcan Corporation or Delcan Corporation does business as Intelligent Networks. Intelligent Networks conducts business in the District of Colorado. Intelligent Networks may be served with process via its registered agent for service, the õCorporation Service Companyö at 1560 Broadway Suite 2090, Denver, Colorado 80202.

- 4. On information and belief, Delcan Technologies, Inc. is a wholly-owned subsidiary of Delcan Corporation. Delcan Technologies, Inc. is formerly known as, but still conducts business as, Intelligent Devices, Inc. According to the State of Georgia Secretary of State® website, Intelligent Devices, Inc. changed its name to Delcan Technologies, Inc. on or about January of 2011 approximately the same time that it was acquired by Defendant Delcan Corporation. Delcan Technologies, Inc. may be served with process by service on its registered agent for service, chief executive officer, chief financial officer and secretary, Mr. Bryan P. Mulligan, at 4411 Suwanee Dam Road, Suite 510, Suwanee, Georgia 30024-8706.
- 5. Hereinafter Defendants Delcan Corporation, Intelligent Networks, Inc. and Delcan Technologies, Inc. formerly known as and doing business as Intelligent Devices shall be collectively referred to as õDelcanö or õDefendantsö. In interpreting the words in this Complaint and the designation of õDelcanö as referring collectively to any combination of one or all Defendants, unless the context will otherwise provide or require, the singular will include the plural and the plural will include the singular (i.e. the designation Delcan may refer and/or relate to any combination of one or more of the Defendants).

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq*. This Court has jurisdiction over this

action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

- 7. This Court has personal jurisdiction over Defendant Delcan by virtue of, *inter alia*, Delcanøs continuing course of conduct whereby Delcan: 1.) purposefully maintains systematic contacts and obligations with the State of Colorado, including but not limited to, its maintaining a corporate headquarters in Littleton, Colorado; 2.) has committed the tortious act of patent infringement that has led to foreseeable damages, harm and injury to Plaintiff in the State of Colorado; 3.) has deliberately created continuing contractual obligations between itself and customers located within the State of Colorado; 4.) directly makes, distributes, offers for sale and/or license, sells and/or licenses and/or advertises its products and/or services in the United States, the State of Colorado and this Judicial District; and 5.) retains one or more employees within the State of Colorado.
- 8. Defendant Delcan has regularly engaged and does currently engage in business and conduct in the State of Colorado and this Judicial District which subjects Delcan to personal jurisdiction. Delcan has voluntarily subjected itself to the jurisdiction of the State of Colorado and this Judicial District and/or has otherwise purposefully availed itself of the privileges of conducting business in the State of Colorado and this Judicial District. Accordingly, this Court has personal jurisdiction over Delcan.

9. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391 and 1400. The Defendant conducts business, has infringed, and continues to infringe upon the Concaten Patent(s) within this Judicial District.

BACKGROUND

- 10. On May 11, 2010, after a full and fair examination, the United States Patent and Trademark Office duly and legally issued United States Patent No. 7,714,705, entitled õMAINTENANCE DECISION SUPPORT SYSTEM AND METHODÖ to Plaintiff Concaten. A true and correct copy of the ÷705 Patent is attached hereto as **Exhibit A**. Since its issuance, the ÷705 Patent has been in full force and effect. Concaten owns all right, title, and interest to the ÷705 Patent, including the right to sue for past, present, and future infringements and any/all rights needed to bring this patent infringement action.
- 11. In summary, a maintenance decision support system (õMDSSö) is a computer-based system that, among other potential applications, provides State transportation departmentsø winter maintenance personnel with specific weather forecast information and treatment recommendations (i.e., road specific treatment recommendations for an efficient, effective and environmentally conscious application of salt and other deicing materials by snow plow operators). automated vehicle location (õAVLö) and maintenance (or mobile) data collection (õMDCö) systems are necessarily integrated, interpreted and/or applied in tandem by a MDSS system to provide real-time maintenance, road and weather

information and optimize current and future recommendations to end-users.

AVL and MDC are crucial components to a MDSS.

- 12. Concatengs -705 Patent concisely embodies Concatengs related methods, software, processes, computer systems, data and related equipment (which includes specially configured interactive touch screen monitors, Global Positioning Satellite (õGPSö) tracking units, on-board camera(s), engine, hydraulic, and other sensor feeds) all of which in concert collect, transmit and display data from, among other sources and snow plows. Hereinafter Concatengs methods, software, processes, computer systems, data and related equipment as claimed in the -705 Patent shall be collectively referred to as the õpatented systems.ö Among other valuable applications, the patented systems allow transportation departmentsg managers, snow plow operators and other personnel to monitor current data from vehicles in the field. Such data includes, but is not limited to, vehicle location, route-specific road treatment data, past and current road weather and pavement conditions, plow positioning and the like.
- 13. On information and belief, Defendant Delcan makes, uses, offers to sell, and/or sells an array of MDSS related products and services to its customers that embody the patented systems and/or substantially rely upon the information and data collected and transmitted via the patented systems and thus Delcanøs array of MDSS related products infringe on Concatenøs Patent. The products utilized by Delcan and the data integrated into such products and/or utilized by Delcan and which Delcan sells and provides to its end-users, for profit, and under the guise of

its own ingenuity, and/or via unlicensed third party provider(s) and otherwise, relies entirely upon, and completely embodies, the patented systems.

- 14. Defendant Delcanos making, using, selling, and/or offering to sell the patented systems and/or components of the patented systems is unauthorized and unlicensed and promotes unauthorized and unlicensed third-party infringers, providers and otherwise of products and/or services that embody and infringe the Concaten Patent has directly infringed, contributed and continues to contribute to the infringement of, the Concaten Patent.
- Defendant Delcanøs infringing products and services, Delcan obtained the patented systems and, via its own agents and the encouragement, instructing, directing and/or advising of third parties as to how to infringe on the Concaten Patent, surreptitiously promoted and actively participated in the advancement of the unauthorized reproduction of the patented systems. Simply stated, Delcan intentionally engaged and/or contracted with third parties to work in concert to infringe on the Concaten Patent. Delcanøs deliberate participation in the reverse engineering of the patented systems, and active efforts to circumvent Concatenøs Patent, has induced infringement of Concatenøs Patent and continues to do so.
- 16. A result of Delcanøs aforementioned inducement of infringement has been Delcanøs own manufacturing, making, deployment, using, selling, and/or offering to sell systems to third parties that directly infringe on Concatenøs Patent as they are deliberate copies of the patented systems.

- 17. Delcanøs MDSS, AVL and/or MDC systems literally infringe upon the patented systems or achieve substantially the same result as the patented systems, perform substantially the same function as the patented systems and operate in substantially the same way as the patented systems.
- 18. Delcanøs direct and indirect infringement of the patented systems has been without express or implied license from Concaten.
- 19. As a result of Defendant Delcanøs direct and indirect patent infringement, Delcan has been unjustly enriched and has caused Concaten to suffer, and continue to suffer, damages, harm and injury in an amount and degree to be proven at trial, plus costs incurred, reasonable attorneysø fees and pre/post-judgment interest.
- 20. Delcan has mislead its actual and potential customers/consumers by intentionally misrepresenting facts and circumstances regarding and concerning the source, origin, quality, characteristics, attributes and function of the patented systems and Delcanøs array of infringing and related products via, without limitation, advertisements, its various websites, promotions and issued propaganda.
- 21, Delcan has intentionally posted false and misleading advertisements on its websites and intentionally presented false and misleading promotions to its actual and potential customers/consumers about the patented systems and about Delcanøs array of infringing and related products. For example, and without limitation, Delcan has falsely and misleadingly declared: 1. that it developed the

patented systems and related onew technologyo (which it did not); 2. that its products implement, embody and conform to national standards and designs (which do not exist); 3. that its products are the result of a national testing program (which also does not exist); and 4. that its products have certain characteristics, properties and abilities (which they do not).

22. As a result of Defendant Delcanøs false statements and/or misrepresentations of fact to various and numerous persons, including its current and potential consumers, the public and various governments, agencies, departments and officials, Delcan has unfairly competed with Concaten, has been unjustly enriched and has caused Concaten to suffer, and continue to suffer, damages, harm and injury in an amount and degree to be proven at trial, plus costs incurred and reasonable attorneysø fees.

FIRST CLAIM FOR RELIEF

(For Defendants' Direct Infringement of Patent No. 7,714,705)

- 23. Concaten hereby incorporates by reference the allegations contained in paragraphs 1 through 22 as if fully set forth herein.
- 24. Delcan has actively and knowingly infringed and is continuing to infringe the -705 Patent with knowledge of Concatenøs patent rights and without a reasonable basis for believing that Delcanøs conduct is lawful.
- 25. Delcan has infringed and is continuing to infringe the ÷705 Patent by, without limitation, engaging in acts including copying and/or making and/or using

and/or selling and/or offering to sell within the United States, during the term of the Patent, products and systems that embody the patented systems described and claimed in the ÷705 Patent either literally or in substantially the same way.

- 26. Delcanøs activities have been without express or implied authority and/or license from Concaten.
- 27. Delcanøs aforementioned infringing products and systems fall within one or more of the claims of the Concaten Patent.
- 28. Delcan will continue to unlawfully and unjustifiably directly infringe the #705 Patent unless enjoined by this Court.
- 29. Delcanøs unlawful and unjustifiable acts of direct infringement have been and continue to be willful, deliberate and in reckless disregard of Concatenøs patent rights. Delcan is thus liable to Concaten for infringement of the ÷705 Patent pursuant to 35 U.S.C. § 271(a).
- 30. As a direct and proximate result of Delcanøs direct infringement of the -705 Patent, Concaten has been damaged, will be further damaged, and is entitled to be compensated for such damages, in an amount and degree to be determined at trial, plus pre/post-judgment interest, costs incurred and reasonable attorneysø fees pursuant to 35 U.S.C. §§ 281, 284 and 285.

SECOND CLAIM FOR RELIEF

(For Defendants' Inducement of Infringement of Patent No. 7,714,705)

- 31. Concaten hereby incorporates by reference the allegations contained in paragraphs 1 through 30 as if fully set forth herein.
- 32. Delcan has actively and knowingly induced the infringed and is continuing to induce infringement of the -705 Patent with knowledge of Concatenøs patent rights and without a reasonable basis for believing that Delcanøs conduct is lawful.
- 33. Delcan has actively, knowingly, willfully and deliberately induced infringement and is continuing to induce infringement of the #705 Patent by, without limitation, engaging in acts including the encouragement, instructing, directing and/or advising of third parties as to how to infringe the Concaten Patent via the unauthorized copying and/or making and/or using and/or selling and/or offering to sell within the United States, during the term of the patent, products and/or services that embody the patented invention/design described and claimed in the #705 Patent, either literally or in substantially the same way, including, for example, AVL and/or MDC systems.
- 34. Delcanøs activities have been without express or implied authority and/or license from Concaten.
- 35. Delcan will continue to unlawfully and unjustifiably induce infringement of the ÷705 Patent unless enjoined by this Court.
- 36. Delcanøs unlawful and unjustifiable inducement of infringement has been

and continues to be willful, deliberate and in reckless disregard of Concatenøs patent rights. Delcan is thus liable to Concaten for the inducement of infringement of the ÷705 Patent pursuant to 35 U.S.C. § 271(b).

37. As a direct and proximate result of Delcanøs inducement of infringement of the -705 Patent, Concaten has been damaged, will be further damaged, and is entitled to be compensated for such damages, in an amount and degree to be determined at trial, plus pre/post-judgment interest, costs incurred and reasonable attorneysø fees pursuant to 35 U.S.C. §§ 281, 284 and 285.

THIRD CLAIM FOR RELIEF

(For Defendants' Contributory Infringement of Patent No. 7,714,705)

- 38. Concaten hereby incorporates by reference the allegations contained in paragraphs 1 through 37 as if fully set forth herein.
- 39. Delcan actively and knowingly accepted, sold and sells and/or offered to sell, within the United States, material component(s) of the patented systems to third parties with knowledge of Concaten¢s patent rights and with knowledge that such material component(s) was/were/is/are to be especially made or especially adapted for use in an infringement of the -705 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.
- 40. Delcan has committed acts of contributory infringement of the *-*705 Patent.
- 41. Delcanøs activities have been without express or implied authority and/or

license from Concaten.

- 42. Delcan will continue to unlawfully and unjustifiably contribute to the infringement of the -705 Patent unless enjoined by this Court.
- 43. Delcanøs unlawful and unjustifiable acts of contributory infringement have been and continue to be willful, deliberate and in reckless disregard of Concatenøs patent rights.
- 44. Delcan is thus liable to Concaten for contributing to the infringement of the -705 Patent pursuant to 35 U.S.C. § 271(c).
- 45. As a direct and proximate result of Delcanøs contributory infringement of the -705 Patent, Concaten has been damaged, will be further damaged, and is entitled to be compensated for such damages, in an amount and degree to be determined at trial, plus pre/post-judgment interest, costs incurred and reasonable attorneysø fees pursuant to 35 U.S.C. §§ 281, 284 and 285.

FOURTH CLAIM FOR RELIEF

(For Defendants' Violations of 15 U.S.C. §1125(a) (Section 43(a)) of the Lanham Act)

- 46. Concaten hereby incorporates by reference the allegations contained in paragraphs 1 through 45 as if fully set forth herein.
- 47. Delcan is in commercial competition with Concaten.
- 48. Delcan has actively and knowingly misrepresented and is actively and knowingly misrepresenting the origins of the patented systems and/or its products

to persons including, without limitation, its actual and potential customers.

- 49. Delcan has actively and knowingly misrepresented and is actively and knowingly misrepresenting the patented systemsø and/or its productsø physical and/or functional attributes to persons including, without limitation, its actual and potential customers.
- 50. The misleading advertising/promotion and statements of fact concern the patented systemsønature and/or characteristics and/or origins and/or qualities.
- 51. The misleading advertising/promotion and statements of fact concern Delcanøs productsønature and/or characteristics and/or origins and/or qualities.
- 52. Delcan has intentionally made, and continues to make, literal false and/or misleading statements of fact concerning the patented systems and/or its products, that have mislead, confused and/or deceived persons including, without limitation, actual and potential customers and consumers via commercial advertisement(s) or promotion(s) about the patented systems and its products. Such confusion and deception continues.
- 53. Delcanøs false and/or misleading statements of fact have and continue to deceive and continue to have the capacity to deceive, persons, including, without limitation, a substantial segment of its actual and/or potential customers and consumers.
- 54. Delcanøs false and/or misleading statements of fact have and continue to confuse and continue to have the capacity to confuse persons including, without limitation, a substantial segment of its actual and/or potential customers and

consumers.

- 55. The deception created and caused by Delcanøs false and/or misleading statements of fact is material in that it has influenced and is likely to continue to influence, persons including, without limitation, its actual and/or potential consumers, and their purchasing decision(s).
- 56. The patented systems and Delcanøs related products are in interstate commerce.
- 57. Delcanøs advertisements/promotions misrepresent the producer and origins of the patented systems and its offered products.
- 58. Delcanøs advertisements/promotions misrepresent its productsø characteristics.
- 59. Delcanøs advertisements/promotions misrepresent the existence of standards allegedly applicable to the patented systems and/or its related products.
- 60. Delcan will continue to unlawfully and unjustifiably deceive consumers unless enjoined by this Court.
- 61. Concaten has made a substantial investment of time, effort, and money in creating the patented systems which have been misappropriated by Delcan.
- 62. Delcan has misappropriated the patented systems at little or no cost, thereby "reaping where it has not sown."
- 63. Delcan's acts have injured Concaten via a direct diversion of profits from Concaten to Delcan and/or via a loss of royalties that Concaten charges to others to use the patented systems.

- 64. Delcan has unfairly capitalized on the investment of time, money and resources of Concaten, Delcanøs competitor.
- 65. Delcanos false and/or misleading statements of fact and misappropriations have been and continue to be intentional, willful, deliberate and/or made in bad faith. Accordingly, pursuant to 15 U.S.C. §1117(a), treble damages are appropriate.
- 66. As a direct and proximate result of Delcanøs false and/or misleading advertisements, false and/or misleading promotions, false and/or misleading statements of fact, and/or misappropriations, Concaten has been competitively and commercially damaged, will be further damaged, and is entitled to be compensated for such damages, in an amount and degree to be determined at trial.

DEMAND FOR JURY TRIAL

Concaten demands a jury trial for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Concaten respectfully prays for the following relief:

- a. Entry of Judgment holding Delcan liable for infringement of the Patent at issue in this litigation;
- An Order permanently restraining and enjoining Delcan, its officers,
 directors, agents, employees, attorneys, affiliates, subsidiaries, assigns,

- successors in interest and those persons in active concert or participation with any of them, from further and continued acts of infringement of the Patent at issue in this litigation pursuant to 35 U.S.C. § 283;
- c. An Order awarding Concaten compensatory damages as a result of Delcanøs infringement of the Patent at issue in this litigation under 35 U.S.C. § 284 and/or otherwise, and not less than a reasonable royalty, together with pre-judgment and post-judgment interest;
- d. Trebling damages under 35 U.S.C. § 284 commensurate with the willful and deliberate nature of Delcanøs infringement of the Patent at issue in this litigation;
- e. An Order awarding Concaten its costs and attorneysø fees under 35 U.S.C.
 § 285;
- f. For Delcanøs violations of 15 U.S.C. §1125(a) (Section 43(a)) of the Lanham Act, an Order awarding Concaten its actual and compensatory damages (including Defendantsøill gained profits) treble damages, costs and attorneysø fees pursuant to 15 U.S.C. §1117(a); and
- g. Such additional and other legal and/or equitable relief that may be available under law and that the Court deems just and appropriate.

Dated this 8th day of June, 2011.

In accordance with D.C.COLO.LCiv.R. 5.6 and D.C.COLO. ECF Procedures §V a duly signed original of this document is on file at undersigned counseløs office and will be made available for inspection by other parties and/or the Court upon request.

Respectfully Submitted,

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