

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

WIAV NETWORKS, LLC)
)
)
) **Plaintiff**)
)
) **v.**)
)
) **ABOVE-NET, INC.; ELECTROVAYA INC.;**)
ELECTROVAYA COMPANY, INC.; EQUUS)
COMPUTER SYSTEMS, INC.; HANBIT)
ELECTRONICS CO., LTD.; HANBIT AMERICA)
LLC; INDUSTRIAL ELECTRONIC ENGINEERS)
INC.; MEDION A.G.; MEDION USA, INC.;)
OPTOELECTRONICS CO., LTD.; OPTICON,)
INC.; OQO, INC.; PHAROS SCIENCE &)
APPLICATIONS, INC.; POS-X INC.; AND)
TANGENT COMPUTER INC.)
)
) **Defendants**)
)
)

**Case No. 05:08-cv-131
JURY TRIAL DEMANDED**

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff WIAV Networks, LLC (“WIAV”), by counsel and pursuant to Federal Rule of Civil Procedure 8(a), alleges the following against Defendants Above-Net, Inc. (“Above-Net”); Electrovaya Inc. (“Electrovaya”); Electrovaya Company, Inc. (“Electrovaya USA”); Equus Computer Systems, Inc. (“Equus”); Hanbit Electronics Co., Ltd. (“Hanbit”); Hanbit America LLC (“Hanbit America”); Industrial Electronic Engineers, Inc. (“IEE”); Medion A.G. (“Medion”); Medion USA, Inc. (“Medion USA”); Optoelectronics Co., Ltd. (“Optoelectronics”); Opticon, Inc. (“Opticon”); OQO, Inc. (“OQO”); Pharos Science & Applications, Inc. (“Pharos”); POS-X Inc. (“POS-X”); and Tangent Computer Inc. (“Tangent”) (singularly “Defendant” and collectively “Defendants”) for patent infringement:

INTRODUCTION

1. Plaintiff WIAV owns United States Patent Nos. 5,400,338 entitled “Parasitic Adoption of Coordinate-Based Addressing by Roaming Node” (the “‘338 Patent”) and 6,480,497 entitled “Method and Apparatus for Maximizing Data Throughput in a Packet Radio Mesh Network” (the “‘497 Patent”).

2. Each Defendant has used, and continues to use, the technology claimed by Plaintiff’s ‘338 Patent and ‘497 Patent in methods and systems that the Defendants make, use, sell, and offer for sale, without Plaintiff’s permission.

3. Plaintiff seeks damages for each Defendant’s infringement of the ‘338 Patent and ‘497 Patent.

PARTIES

4. Plaintiff WIAV is a Virginia limited liability company with its principal place of business at 11289 Stones Throw Drive, Reston, Virginia 20194.

5. On information and belief, Above-Net is a Minnesota corporation with its principal place of business at 5511 Butternut Circle, Minnetonka, Minnesota 55343-4330.

6. On information and belief, Electrovaya is a foreign corporation with its principal place of business at 2645 Royal Windsor Drive, Mississauga, Ontario, Canada L5J 1K9.

7. On information and belief, Electrovaya USA is a Delaware corporation and a United States subsidiary of Electrovaya with its principal place of business at 107 Hermes Road, Suite 100 Malta, New York 12020.

8. On information and belief, Equus is a Delaware corporation with its principal place of business at 719 Kasota Avenue, Minneapolis, Minnesota 55414.

9. On information and belief, Hanbit is a foreign corporation with its principal place of business at 414-5 Woncheon-Dong, Yeongtong-Gu Suwon-City, Gyeonggi-Do, 443-823 South Korea.

10. On information and belief, Hanbit America is a Minnesota limited liability company and a United States subsidiary of Hanbit with its principal place of business at 3033 Excelsior Boulevard, Suite 10, Minneapolis, Minnesota 55416.

11. On information and belief, IEE is a California corporation with its principal place of business at 7740 Lemona Avenue, Van Nuys, California 91409.

12. On information and belief, Medion is a foreign corporation with its principal place of business at Am Zehnthof 77, 45307 Essen, Germany.

13. On information and belief, Medion USA is a Delaware corporation and a United States subsidiary of Medion with its principal place of business at 1130 Lake Cook Road, Suite 340, Buffalo Grove, Illinois 60089.

14. On information and belief, Optoelectronics is a foreign corporation with its principal place of business at 5-5-3, Tsukagoshi, Warabi, Saitama 335-0002 Japan.

15. On information and belief, Opticon is a Delaware corporation and a United States subsidiary of Optoelectronics with its principal place of business at 8 Olympic Drive, Orangeburg, New York 10962.

16. On information and belief, OQO is a Delaware corporation with its principal place of business at 583 Shotwell Street, San Francisco, California 94110-2011.

17. On information and belief, Pharos is a California corporation with its principal place of business at 411 Amapola Avenue, Torrance, California 90501-1478.

18. On information and belief, POS-X is a Washington corporation with its principal place of business at 2130 Grant Street, Bellingham, Washington 98225.

19. On information and belief, Tangent is a California corporation with its principal place of business at 191 Airport Boulevard, Burlingame, California 94010.

JURISDICTION AND VENUE

20. This action arises under the patent laws of the United States, Title 35 of the United States Code, §§ 271 and 281, *et seq.* because Defendants each have committed acts of

patent infringement within the United States and this judicial district. Accordingly, this Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

21. Venue is proper in this judicial district because each Defendant is a corporation subject to personal jurisdiction in this judicial district, 28 U.S.C. §§ 1391(b)-(c).

22. On information and belief, Defendants are subject to this Court's specific and general personal jurisdiction consistent with the principles of due process and/or the Texas Long Arm Statute, due at least to their substantial business in this forum, including: (i) a portion of the infringements alleged herein, including using, selling, and offering to sell products, methods, and systems that infringe the claims of the '338 Patent and '497 Patent; and (ii) the presence of established distribution channels for Defendants' products in this forum; and (iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this judicial District.

COUNT I
INFRINGEMENT OF THE '338 PATENT

23. Plaintiff repeats and incorporates by reference each of the allegations contained in paragraphs 1 – 21 above, and further alleges as follows:

24. The United States Patent and Trademark Office issued the '338 Patent on March 21, 1995. A true and correct copy of the text of the '338 Patent is attached to this Complaint as Exhibit A. Plaintiff is the owner of all rights, title, and interest in the '338 Patent, including all rights to pursue and collect damages for past infringements of the patent.

25. Without a license or permission from Plaintiff, Defendant Above-Net has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Above-Net's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Above-Net's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

26. Without a license or permission from Plaintiff, Defendant Electrovaya has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Electrovaya's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Electrovaya's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

27. Without a license or permission from Plaintiff, Defendant Electrovaya USA has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Electrovaya USA's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Electrovaya USA's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

28. Without a license or permission from Plaintiff, Defendant Equus has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Equus' infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Equus' infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

29. Without a license or permission from Plaintiff, Defendant Hanbit has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Hanbit's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Hanbit's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

30. Without a license or permission from Plaintiff, Defendant Hanbit America has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Hanbit America's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Hanbit America's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

31. Without a license or permission from Plaintiff, Defendant IEE has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. IEE's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, IEE's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

32. Without a license or permission from Plaintiff, Defendant Medion has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Medion's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Medion's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

33. Without a license or permission from Plaintiff, Defendant Medion USA has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Medion USA's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Medion USA's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

34. Without a license or permission from Plaintiff, Defendant Optoelectronics has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Optoelectronics' infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Optoelectronics' infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

35. Without a license or permission from Plaintiff, Defendant Opticon has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Opticon's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Opticon's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

36. Without a license or permission from Plaintiff, Defendant OQO has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the

patented invention. OQO's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, OQO's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

37. Without a license or permission from Plaintiff, Defendant Pharos has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Pharos' infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Pharos' infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

38. Without a license or permission from Plaintiff, Defendant POS-X has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. POS-X's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, POS-X's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

39. Without a license or permission from Plaintiff, Defendant Tangent has infringed the '338 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Tangent's infringement of the '338 Patent has caused substantial damage to WIAV. On information and belief, Tangent's infringement of the '338 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

COUNT II
INFRINGEMENT OF THE '497 PATENT

40. Plaintiff repeats and incorporates by reference each of the allegations contained in paragraphs 1 – 21 above, and further alleges as follows:

41. The United States Patent and Trademark Office issued the '497 Patent on November 12, 2002. A true and correct copy of the text of the '497 Patent is attached to this Complaint as Exhibit B. Plaintiff is the owner of all rights, title, and interest in the '497 Patent, including all rights to pursue and collect damages for past infringements of the patent.

42. Without a license or permission from Plaintiff, Defendant Above-Net has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Above-Net's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Above-Net's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

43. Without a license or permission from Plaintiff, Defendant Electrovaya has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Electrovaya's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Electrovaya's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

44. Without a license or permission from Plaintiff, Defendant Electrovaya USA has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Electrovaya USA's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Electrovaya USA's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

45. Without a license or permission from Plaintiff, Defendant Equus has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Equus' infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Equus' infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

46. Without a license or permission from Plaintiff, Defendant Hanbit has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Hanbit's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Hanbit's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

47. Without a license or permission from Plaintiff, Defendant Hanbit America has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Hanbit America's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Hanbit America's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

48. Without a license or permission from Plaintiff, Defendant IEE has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. IEE's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, IEE's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

49. Without a license or permission from Plaintiff, Defendant Medion has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Medion's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Medion's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

50. Without a license or permission from Plaintiff, Defendant Medion USA has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Medion USA's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Medion USA's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

51. Without a license or permission from Plaintiff, Defendant Optoelectronics has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Optoelectronics' infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Optoelectronics' infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

52. Without a license or permission from Plaintiff, Defendant Opticon has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying

the patented invention. Opticon's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Opticon's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

53. Without a license or permission from Plaintiff, Defendant OQO has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. OQO's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, OQO's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

54. Without a license or permission from Plaintiff, Defendant Pharos has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Pharos' infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Pharos' infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

55. Without a license or permission from Plaintiff, Defendant POS-X has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. POS-X's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, POS-X's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

56. Without a license or permission from Plaintiff, Defendant Tangent has infringed the '497 Patent by importing, making, using, offering to sell, and/or selling products embodying the patented invention. Tangent's infringement of the '497 Patent has caused substantial damage to WIAV. On information and belief, Tangent's infringement of the '497 Patent was willful and deliberate, entitling WIAV to enhanced damages and attorneys fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

A. For a judgment declaring that each Defendant has infringed at least one claim of the '338 Patent.

B. For a judgment awarding WIAV compensatory damages as a result of each Defendant's infringement of the '338 Patent, together with interest and costs, and in no event less than a reasonable royalty.

C. For a judgment declaring that each Defendant's infringement of the '338 Patent has been willful and deliberate.

D. For a judgment awarding WIAV treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of each Defendant's willful and deliberate infringement of the '338 Patent.

E. For a judgment declaring that this case is exceptional as to each Defendant and awarding WIAV its expenses, costs, and attorneys fees under 35 U.S.C. § 285.

F. For a judgment declaring that each Defendant has infringed at least one claim of the '497 Patent.

G. For a judgment awarding WIAV compensatory damages as a result of each Defendant's infringement of the '497 Patent, together with interest and costs, and in no event less than a reasonable royalty.

H. For a judgment declaring that each Defendant's infringement of the '497 Patent has been willful and deliberate.

I. For a judgment awarding WIAV treble damages and pre-judgment interest under 35 U.S.C. § 284 as a result of each Defendant's willful and deliberate infringement of the '497 Patent.

J. For a judgment declaring that this case is exceptional as to each Defendant and awarding WIAV its expenses, costs, and attorneys fees under 35 U.S.C. § 285.

K. For a grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining each Defendant from further acts of infringement.

L. For such other and further relief as the Court deems just and proper.

Dated: September 25, 2008

Respectfully submitted,

By: */s/ Evelyn Y. Chen*

Evelyn Y. Chen (Texas Bar No. 24055297)

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Attorneys For Plaintiff

WIAV NETWORKS, LLC

DEMAND FOR JURY TRIAL

Plaintiff, WIAV Networks, LLC, demands a trial by jury of all issues so triable in this action.

Dated: September 25, 2008

Respectfully submitted,

By: */s/ Evelyn Y. Chen*

Evelyn Y. Chen (Texas Bar No. 24055297)

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