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ACTERNA, LLC

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Greenbelt Division)

ACTERNA, LLC,

Plaintiff,

vs.

SUNRISE TELECOM, INC.;
CONSULTRONICS, LTD.; and
CONSULTRONICS, INC.,

Defendants.

Civil Action No.: _____

**COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND
FOR JURY TRIAL**

ORIGINAL COMPLAINT

Plaintiff, Acterna, LLC, by its undersigned counsel, brings this action against Sunrise Telecom, Inc., Consultronics, Ltd., and Consultronics, Inc. (collectively referred to as "defendants") and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under 35 U.S.C. § 1, et seq.

PARTIES

2. Plaintiff Acterna, LLC ("Acterna") is a limited liability company formed and existing under the laws of Delaware with its principal place of business at One Milestone Center Court, Germantown, Maryland 20876.

3. Defendant Sunrise Telecom, Inc. ("Sunrise") is a company incorporated under the laws of Delaware with its principal place of business at 302 Enzo Drive, San Jose, CA 95138.

4. Defendant Consultronics, Ltd. is a company formed and existing under the laws of Canada with its principal place of business at 160 Drumlin Circle, Concord, Ontario, Canada L4K3E5.

5. Defendant Consultronics, Inc. is a company incorporated under the laws of Delaware with its principal place of business at 1304 Rockbridge Rd, Suite 4, Stone Mountain, GA 30087. Consultronics, Inc. is a subsidiary of Consultronics, Ltd.

JURISDICTION AND VENUE

6. Subject matter jurisdiction exists pursuant to 28 U.S.C. §§ 1331 & 1338(a).

7. Personal jurisdiction over these defendants is proper because each defendant transacts business in this judicial district by manufacturing, using, selling, offering for sale, or importing products that infringe the patents at issue in this lawsuit or by practicing methods covered by the patents at issue or by inducing others to infringe the patents at issue or by conducting other business in this judicial district or by their presence in this judicial district.

8. Venue exists in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b).

BACKGROUND FACTS

The Patents-In-Suit

9. Acterna owns all title, right and interest in and to United States Letters Patent No. 6,064,721 (“the '721 patent”) entitled Modular Test Instrument, which was duly and legally issued by the United States Patent and Trademark Office on May 16, 2000. A copy of the '721 patent is attached as Exhibit A.

10. Acterna owns all title, right and interest in and to United States Letters Patent No. 6,385,300 (“the '300 patent”) entitled Modular Test Instrument, which was duly and legally issued by the United States Patent and Trademark Office on May 7, 2002. A copy of the '300 patent is attached as Exhibit B.

11. Acterna owns all title, right and interest in and to United States Letters Patent No. 6,590,963 (“the '963 patent”) entitled Modular Test Instrument, which was duly and legally issued by the United States Patent and Trademark Office on July 8, 2003. A copy of the '963 patent is attached as Exhibit C.

12. Acterna owns all title, right and interest in and to United States Letters Patent No. 5,511,108 (“the '108 patent”) entitled Apparatus and Method for Performing and Controlling Testing of Electrical Equipment, which was duly and legally issued by the United States Patent and Trademark Office on April 23, 1996. A copy of the '108 patent is attached as Exhibit D.

13. The '721 patent, '300 patent, '963 patent and the '108 patent hereinafter are referred to collectively as the “Patents in Suit.”

The Sunrise xDSL Product

14. Sunrise manufactures, uses, sells, offers for sale or imports a product known as the xDSL. The xDSL is a handheld test set that can perform tests on DSL networks.

15. The xDSL has a modular design that allows a user to insert a plug-in module selected from a group of various plug-in modules. Each plug-in module can be assembled with the xDSL base unit to allow the xDSL to perform testing of different transmission technologies. Appropriate graphical user interfaces are displayed to guide the user through the operation of the test set. A product brochure containing pictures and a description of the xDSL is attached as Exhibit E.

16. The xDSL and the associated plug-in modules are manufactured, used, offered for sale, sold or imported in this judicial district and throughout the United States by Sunrise.

The Sunrise Modular Test Toolkit “MTT” Product

17. Sunrise manufactures, uses, sells, offers for sale or imports a product known as the MTT. The MTT is a handheld test set that can perform various tests on communication networks.

18. The MTT also has a modular design that allows a user to insert a plug-in module that is selected from a group of various plug-in modules. Each plug-in module allows the MTT base to perform tests for different transmission technologies. Appropriate graphical user interfaces are displayed to guide the user through the operation of the test set. A product brochure for the MTT is attached as Exhibit F.

19. The MTT and the associated plug-in modules are manufactured, used, offered for sale, sold or imported in this judicial district and throughout the United States by Sunrise.

The Sunrise Scalable Testing Toolkit “STT” Product

20. Sunrise manufactures, uses, sells, offers for sale or imports a product known as the STT. The STT is a test set that can perform different tests on communication networks.

21. The STT base unit is formed by two separable components. The STT has a modular design that allows a user to insert an application module between the two components that form the base unit. With that application module inserted, the STT base unit will be able to perform tests for different transmission technologies. Without the application module, the STT base unit operates as a fully functional computer. A product brochure for the STT is attached as Exhibit G.

22. The STT and the associated application modules are manufactured, used, offered for sale, sold or imported in this judicial district and throughout the United States by Sunrise.

The Consultronics, Ltd. and Consultronics, Inc. CoLT 450 Product

23. Consultronics, Ltd. and Consultronics, Inc. manufacture, use, sell, offer for sale or import a product known as the CoLT 450. The CoLT 450 is a modular test unit that is capable of testing various DSL lines.

24. The CoLT 450 consists of three components: (1) a base unit that contains a microprocessor, LCD display, keypad and communications ports, (2) a rechargeable battery module that slides in and locks to the bottom of the base unit, and (3) an application module that slides in and locks from the top of the unit. The software that runs the application resides on the application module and appropriate graphical user interfaces are displayed to guide the user through the operation of the test set. A product brochure for the CoLT 450 is attached as Exhibit H.

25. The CoLT 450 is manufactured, used, offered for sale, sold or imported in this judicial district and throughout the United States by Consultronics, Ltd. and Consultronics, Inc.

COUNT I – PATENT INFRINGEMENT BY SUNRISE

26. The allegations in Paragraphs 1 through 25 above are incorporated by reference in this Count I as if fully restated herein.

27. Sunrise has and continues to infringe directly, indirectly, contributorily, or by inducement, the claims of the '721 patent, the '300 patent and the '963 patent by making, using, offering for sale, selling, or importing the xDSL and MTT in this judicial district and throughout the United States.

28. Sunrise has and continues to infringe directly, indirectly, contributorily, or by inducement, the claims of the '108 patent by making, using, offering for sale, selling, or importing the STT in this judicial district and throughout the United States.

29. Sunrise's acts of infringement will continue unless enjoined by this Court.

30. Sunrise's acts of infringement have caused and will continue to cause Acterna substantial and irreparable injury for which Acterna is entitled to receive injunctive relief and damages adequate to compensate Acterna for such infringement.

31. Sunrise has been on notice of its infringement of one or more of the Patents in Suit and, notwithstanding such notice, has continued to engage in such activity.

32. Sunrise's acts of infringement have been willful and deliberate rendering this case "exceptional" within the meaning of 35 U.S.C. § 285.

**COUNT II – PATENT INFRINGEMENT BY CONSULTRONICS LTD. AND
CONSULTRONICS, INC.**

33. The allegations in Paragraphs 1 through 25 above are incorporated by reference in this Count II as if fully restated herein.

34. Consultronics, Ltd. and Consultronics, Inc. have and continue to infringe directly, indirectly, contributorily, or by inducement, the claims of the '721 patent, the '300 patent and the '963 patent by making, using, offering for sale, selling, or importing the CoLT 450 in this judicial district and throughout the United States.

35. Consultronics, Ltd.'s and Consultronics, Inc.'s acts of infringement will continue unless enjoined by this Court.

36. Consultronics, Ltd.'s and Consultronics, Inc.'s acts of infringement have caused and will continue to cause Acterna substantial and irreparable injury for which Acterna is entitled to receive injunctive relief and damages adequate to compensate Acterna for such infringement.

37. Consultronics, Ltd. and Consultronics, Inc. have been on notice of their infringement of one or more of the Patents in Suit and, notwithstanding such notice, have continued to engage in such activity.

38. Consultronics, Ltd.'s and Consultronics, Inc.'s acts of infringement have been willful and deliberate, rendering this case "exceptional" within the meaning of 35 U.S.C. § 285.

WHEREFORE, Acterna requests this Court to enter judgment in its favor and against each defendant awarding it the following relief:

1. Permanently enjoining defendants, and their respective officers, agents, servants, employees, and any others acting in concert with defendants from infringing any of the Patents in Suit;

2. Awarding Acterna damages resulting from the defendants' acts of infringement and ordering defendants to account for and pay to Acterna damages adequate to compensate Acterna for the infringement of its patent rights, including lost profits;

3. Awarding Acterna treble damages pursuant to 35 U.S.C. § 284 as a result of the defendants' willful acts of infringement;
4. Declaring this case exceptional pursuant to 35 U.S.C. § 285 and awarding Acterna interest, costs, expenses and attorneys' fees; and
5. Granting Acterna such other relief as the Court deems just and proper.

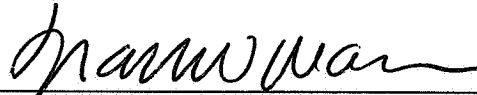
JURY DEMAND

Acterna hereby demands a trial by jury for all issues in this action.

Dated: 3/31/04

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By:



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