

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

T.M. PATENTS, L.P., and	:	
T.M. CREDITORS LLC,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. _____
	:	
CISCO SYSTEMS, INC.,	:	
	:	
Defendant.	:	

**COMPLAINT AND JURY DEMAND**

1. Plaintiffs T.M. Patents, L.P. (“TM Patents”) and T.M. Creditors LLC (“TM Creditors”) for their complaint against Defendant CISCO Systems, Inc. (“Defendant CISCO”) allege as follows:

**PARTIES**

2. Plaintiff TM Patents is a limited partnership of the State of Delaware having its principal place of business at 124 Washington Street, Suite 101, Foxboro, Massachusetts 02035.

3. Plaintiff TM Creditors is a limited liability corporation of the State of Delaware having its principal place of business at 124 Washington Street, Suite 101, Foxboro, Massachusetts 02035.

4. Defendant CISCO is a corporation of the State of California having a principal place of business a 170 West Tasman Dr., San Jose, California 95134.

5. Plaintiffs are informed and believe, and upon such information and belief, allege that Defendant CISCO is doing business in this judicial district.

**JURISDICTION AND VENUE**

6. This action arises under the Patent Laws of the United States, Title 35 United States Code. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b).

**GENERAL ALLEGATIONS**

8. Defendant CISCO is in the business of manufacturing and selling switches for networking servers with low latency using cut-through switching. Cut-through switching is a type of switching in which the switch starts to forward a packet of information from a first node to a second node before the whole packet has been received at the first node.

9. Defendant CISCO has manufactured, imported, used, offered for sale, and has sold switches that facilitate cut-through switching among servers and processors. Examples of such switches include the Nexus 5000 series (e.g., model numbers 5010, 5020, 5548P, 5548UP, and 5596UP), the Nexus 4000 series (e.g., model number 4001), the Catalyst 1900 series, and the Catalyst 3200 series, collectively referred to herein as “CISCO cut-through switches.”

10. Defendant CISCO advertised integrating CISCO cut-through switches with servers and processors in networking applications and provided technical support for users to integrate its switches with servers and processors.

11. Defendant CISCO has sold CISCO cut-through switches to OEMs and users which have interfaced them with servers to facilitate cut-through switching among the servers.

12. CISCO cut-through switches have no other substantial commercial use other than for cut-through switching.

**PATENT-IN-SUIT**

13. Plaintiff TM Patents is the lawful owner of United States Letters Patent No. 5,212,773 (“’773 Patent”) entitled “Wormhole Communications Arrangement for Massively Parallel Processor” which duly and legally issued on May 18, 1993 and names W. Daniel Hillis as the inventor. A copy of the ’773 Patent is attached hereto as Exhibit A.

14. The ’773 Patent was assigned to TM Patents on February 8, 1996 by RTMC Corporation and RTPC Corporation. The assignment for the ’773 Patent were recorded by the United States Patent and Trademark Office on February 27, 1996.

15. TM Patents’ ownership in the ’773 Patent was perfected in or about May 2003 by confirming that the U.S. Government has a paid-up license to the patent.

16. Plaintiff TM Patents is the owner of the entire right and title to the ’773 Patent. Pursuant to the terms of that Restructuring and Forbearance Agreement dated as of January 28, 2000 by and between, *inter alia*, TM Patents and TM Creditors, TM Creditors is given sole and exclusive control of the licensing and litigation process concerning the ’773 Patent.

17. Plaintiffs have never imported, made, sold or offered for sale any products covered by the ’773 Patent. Plaintiffs have licensed the ’773 Patent. Plaintiffs are informed and believe, and upon such information and belief, allege that licensees of the ’773 Patent have not made, offered for sale, or sold product covered by the ’773 Patent as to require marking.

18. Defendant CISCO received constructive notice of the ’773 Patent.

19. Defendant CISCO had actual knowledge of the ’773 Patent no later than January 30, 2007 when Plaintiffs’ attorney, Paul Kochanski, transmitted a letter to Defendant CISCO informing it of the ’773 Patent, among other patents.

20. Defendant CISCO also had actual knowledge of the ’773 Patent by virtue of the ’773 Patent being cited in at least twenty one (21) patents issued to Defendant CISCO. The earliest of said CISCO patents issued on August 8, 2000.

21. Plaintiffs are informed and believe, and upon such information and belief, allege that Defendant CISCO is sophisticated in patent matters and understands the need to investigate whether its products or the use of its products by its customers infringe known third-party patents.

22. Defendant CISCO continued to sell CISCO cut-through switches despite having actual knowledge of the '773 Patent.

**COUNT I**

**(PATENT INFRINGEMENT OF U.S. PATENT NO. 5,212,773)**

23. This is a claim for patent infringement under 35 U.S.C. § 271 and § 281.

24. Plaintiffs hereby repeat, re-allege and incorporate by reference paragraphs 1 through 22 of this Complaint as though fully set forth herein.

25. Plaintiffs are informed and believe, and upon such information and belief, allege that Defendant CISCO, through its agents, employees and servants, has infringed the '773 Patent, either literally or under the doctrine of equivalents, directly or indirectly by knowingly and specifically intending to contribute to or induce infringement by others, alone or through their relationships with customers, OEMs and/or end users in violation of § 271(a)-(c) and (f).

26. Plaintiffs are informed and believe, and upon such information and belief, allege that Defendant CISCO, through its agents, employees and servants, has infringed directly the '773 Patent, either literally or under the doctrine of equivalents, by, among other things, importing, making, using, selling, or offering for sale CISCO cut-through switches and other CISCO products covered by the '773 Patent.

27. Plaintiffs are informed and believe, and upon such information and belief, allege that Defendant CISCO, through its agents, employees and servants, has infringed indirectly the '773 Patent, either literally or under the doctrine of equivalents, by, among other things, actively

inducing its customers, OEMs and/or end users to configure CISCO cut-through switches and other CISCO products in a way to be covered by the '773 Patent.

28. Defendant CISCO has been aware of the '773 Patent since at least January 2007, and despite such knowledge, Defendant CISCO has specifically intended that its customers, OEMs and end users configure CISCO cut-through switches and other CISCO products in such a way that they are covered by the '773 Patent, either literally or under the doctrine of equivalents, by at least advertising such configurations and by providing instructions and technical support for such configurations, and that Defendant CISCO knew or should have known that its actions were inducing infringement.

29. Plaintiffs are informed and believe, and upon such information and belief, allege that Defendant CISCO, through its agents, employees and servants, has infringed indirectly the '773 Patent, either literally or under the doctrine of equivalents, by, among other things, contributing to the infringement of this patent by providing its customers, OEMs and end users with CISCO cut-through switches and other CISCO products to be configured in such a way as to be covered by the '773 Patent.

30. Plaintiffs are informed and believe, and upon such information and belief, allege that Defendant CISCO has made, used, sold, offered for sale, or imported CISCO cut-through switches and other CISCO products embodying the claimed invention with knowledge of the '773 Patent, and knowing that the CISCO cut-through switches and other CISCO products would be configured to be covered by the '773 Patent. The CISCO cut-through switches and other CISCO products are especially made or adapted to be configured according to the '773 Patent and are not a staple article or commodity suitable for substantial noninfringing use.

31. Defendant CISCO committed these acts without a license or authorization from Plaintiffs.

32. Defendant CISCO has derived, received gains, profits and advantages in amounts not presently known by Plaintiffs with certainty, from its acts of infringement of the '773 Patent.

33. Plaintiffs are informed and believe, and upon such information and belief, allege that Defendant CISCO, despite having knowledge of the '773 Patent since at least January 2007,

knowingly, willfully and deliberately infringed the '773 Patent in disregard of Plaintiffs' rights, thus rendering this action against Defendant CISCO "exceptional" as that term is employed in 35 U.S.C. § 285.

34. Due to the acts of infringement by Defendant CISCO, Plaintiffs are entitled to any monetary recovery arising out of the infringement of such patent.

WHEREFORE, Plaintiffs pray for the following relief:

- A. that Defendant CISCO be adjudged to have infringed the '773 Patent;
- B. that Defendant CISCO be adjudged to have willfully and deliberately infringed the '773 Patent;
- C. that Defendant CISCO account for damages to Plaintiffs for its infringement of the '773 Patent;
- D. that a judgment be entered against Defendant CISCO awarding Plaintiffs all damages to which they are entitled under 35 U.S.C. § 284, including increased damages for Defendant's willful infringement;
- E. that an assessment be awarded to Plaintiffs of interest on the damages so computed;
- F. that the Court award Plaintiffs their reasonable attorneys' fees and costs pursuant to 35 U.S.C. § 285; and
- G. that Plaintiffs receive such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiffs hereby demand a trial by a jury on all issues so triable.

T.M. PATENTS, L.P., and  
T.M. CREDITORS LLC

By their attorneys,

/s/ Zachary W. Berk

---

Peter S. Brooks (BBO #058980)  
Zachary W. Berk (BBO #663575)  
SAUL EWING LLP  
131 Dartmouth Street, Suite 501  
Boston, MA 02116  
T: (617) 723-3300  
F: (617) 723-4151

Dated: August 1, 2012