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11 *Attorneys for Plaintiff Cisco Systems, Inc.*

12
13 **IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 _____)
CISCO SYSTEMS, INC.,)

15 Plaintiff,)

16 v.)

17 ALBERTA TELECOMMUNICATIONS)
18 RESEARCH CENTRE d/b/a TR LABS)
and TR TECHNOLOGIES, INC.,)

19 Defendants.)

) C.A. No. 12-3293-PJH

) **FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT**

) **JURY TRIAL DEMANDED**
)
20
21

22 Plaintiff Cisco Systems, Inc. (“Cisco”) by and through its attorneys brings this action for
23 a declaratory judgment and alleges as follows:

24 **NATURE OF THE ACTION**

25 Cisco is a worldwide leader in the development of the networking equipment that
26 underlies today’s modern telecommunications infrastructure. Cisco’s customers include leading
27
28

1 telecommunications providers who have used Cisco's products to build a high speed, reliable
2 network infrastructure for the delivery of voice and data content such as AT&T, Qwest (now
3 CenturyLink), Windstream, Comcast, Sprint, Cox, tw telecom, and Level 3. Defendants Alberta
4 Telecommunications Research Centre d/b/a TR Labs ("TR Labs") and TR Technologies, Inc.
5 ("TR Tech") (collectively, "Defendants") have accused Cisco's customers of infringing at least
6 eight of its patents through use of Cisco's products in their telecommunications networks. To
7 date, TR Labs has sued several of Cisco's customers in actions currently pending in the District
8 of New Jersey (C.A. No. 09-cv-3883) and the District of Colorado (C.A. No. 12-cv-581). In
9 addition, Defendants have sent letters to other customers relating to their use of Cisco's products
10 in their networks and threatening to file suit on the same patents. Defendants' allegations of
11 infringement arising from the use of Cisco's products are unwarranted, and Cisco brings this
12 declaratory judgment action to free its customers, its product lines, and itself from these
13 unwarranted allegations of patent infringement.

14 PARTIES

15 1. Plaintiff Cisco is a corporation organized and existing under the laws of the State
16 of California with its principal place of business at 170 West Tasman Drive, San Jose, California
17 95134.

18 2. Upon information and belief, Defendant TR Labs is a research consortium
19 organized and existing under the laws of Canada, with its principal place of business at 9107
20 116th Street, Edmonton, Alberta, Canada.

21 3. Upon information and belief, Defendant TR Tech is a corporation organized and
22 existing under the laws of Canada with its principal place of business at 9107 116th Street,
23 Edmonton, Alberta, Canada.

1 **FACTUAL BACKGROUND**

2 **Cisco's Products**

3 4. Cisco is a worldwide leader in the development of networking products. Cisco
4 provides its networking products to telecommunications customers who deploy them in their
5 own networks.

6 5. Cisco's product line includes its ONS 15454 multiservice platforms and CRS-1
7 routers.

8 **Defendants' Patents**

9 6. U.S. Patent No. 4,956,835 ("the '835 patent") is entitled "Method and apparatus
10 for self-restoring and self-provisioning communication networks" and issued on September 11,
11 1990. A copy of the '835 patent is attached as Exhibit A.

12 7. U.S. Patent No. 5,850,505 ("the '505 patent") is entitled "Method for
13 preconfiguring a network to withstand anticipated failures" and issued on December 15, 1998. A
14 copy of the '505 patent is attached as Exhibit B.

15 8. U.S. Patent No. 6,377,543 ("the '543 patent") is entitled "Path restoration of
16 networks" and issued on April 23, 2002. A copy of the '543 patent is attached as Exhibit C.

17 9. U.S. Patent No. 6,404,734 ("the '734 patent") is entitled "Scalable network
18 restoration device" and issued on June 11, 2002. A copy of the '734 patent is attached as Exhibit
19 D.

20 10. U.S. Patent No. 6,421,349 ("the '349 patent") is entitled "Distributed
21 preconfiguration of spare capacity in closed paths for network restoration" and issued on July 16,
22 2002. A copy of the '349 patent is attached as Exhibit E.

23 11. U.S. Patent No. 6,654,379 ("the '379 patent") is entitled "Integrated ring-mesh
24 network" and issued on November 25, 2003. A copy of the '379 patent is attached as Exhibit F.

1 12. U.S. Patent No. 6,914,880 (“the ’880 patent”) is entitled “Protection of routers in
2 a telecommunications network” and issued on July 5, 2005. A copy of the ’880 patent is
3 attached as Exhibit G.

4 13. U.S. Patent No. 7,260,059 (“the ’059 patent”) is entitled “Evolution of a
5 telecommunications network from ring to mesh structure” and issued on August 21, 2007. A
6 copy of the ’059 patent is attached as Exhibit H.

7 14. TR Labs purports to be the owner by assignment of the ’835, ’505, ’543, ’734,
8 ’349, ’379, ’880, and ’059 patents.

9 15. TR Tech purports to be the exclusive licensee of the ’835, ’505, ’543, ’734, ’349,
10 ’379, ’880, and ’059 patents.

11 16. Upon information and belief, TR Labs does not commercialize any products or
12 services embodying the ’835, ’505, ’543, ’734, ’349, ’379, ’880, and ’059 patents.

13 17. Upon information and belief, TR Tech does not commercialize any products or
14 services embodying the ’835, ’505, ’543, ’734, ’349, ’379, ’880, and ’059 patents.

15 **Actual and Threatened Litigation Involving Defendants’ Patents**

16 AT&T Litigation

17 18. On August 5, 2009, TR Labs sued AT&T Corp. (“AT&T”) in the District of New
18 Jersey (C.A. No. 09-cv-3883), alleging infringement of the ’880, ’349, and ’059 patents.

19 19. On January 26, 2010, TR Labs amended its complaint against AT&T to allege
20 infringement of the ’880, ’349, ’059, and ’734 patents.

21 20. On November 18, 2010, TR Labs again amended its complaint against AT&T to
22 allege infringement of the ’880, ’059, ’734, ’835, and ’505 patents.

23 21. TR Labs has served infringement contentions in the AT&T litigation that identify
24 the use of Cisco’s ONS 15454 multiservice platforms in AT&T’s network as infringing TR
25 Labs’s patents.

1 22. AT&T has denied infringement of TR Labs’s patents by its use of Cisco’s
2 products and has filed counterclaims seeking a declaratory judgment that TR Labs’s patents are
3 not infringed, invalid, and unenforceable.

4 Colorado Litigation

5 23. On March 6, 2012, TR Labs sued CenturyLink, Inc. (“CenturyLink”) in the
6 District of Colorado (C.A. No. 12-cv-581) alleging infringement of the ’835, ’505, ’543, ’734,
7 ’349, ’880, and ’059 patents (the “Colorado case”).

8 24. On April 20, 2012, TR Labs amended its complaint in the Colorado case to allege
9 infringement of the ’835, ’505, ’543, ’734, ’349, ’880, and ’059 patents by Qwest
10 Communications Company, LLC, Qwest Corp. (together with Qwest Communications
11 Company, LLC, “Qwest”), Windstream Corp. (“Windstream”), Sprint Nextel Corp. (“Sprint”),
12 Comcast Corp. (“Comcast”), and Cox Communications, Inc. (“Cox”).

13 25. On June 29, 2012, Defendants filed a second amended complaint in the Colorado
14 case, which adds TR Tech as a plaintiff, alleges infringement of the patents-in-suit by two
15 additional defendants, tw telecom, inc. (“tw telecom”) and Level 3 Communications, Inc.
16 (“Level 3”), and alleges infringement of an eighth patent (the ’379 patent) by all defendants.

17 26. Defendants’ second amended complaint in the Colorado case alleges that Qwest,
18 Windstream, Sprint, Comcast, Cox, tw telecom, and Level 3 “have deployed at least Cisco ONS
19 15454 Multiservice platforms . . . and/or Cisco CRS-1 routers” in their telecommunications
20 networks to “utilize the functionality of the afore-referenced devices” in a manner that infringes
21 the ’835, ’505, ’543, ’734, ’349, ’379, ’880, and/or ’059 patents. Cisco denies that its products—
22 or their use in Cisco’s customers networks—infringes the ’835, ’505, ’543, ’734, ’349, ’379,
23 ’880, and/or ’059 patents.

1 Threatened Litigation

2 27. TR Labs sent letters in March 2012 to several of Cisco's other customers alleging
3 that their telecommunications networks infringe TR Labs's patents, including US Signal
4 Company LLC.

5 28. Upon information and belief, TR Labs has provided claim charts to some of
6 Cisco's customers alleging that the use of Cisco's products in its customers' telecommunications
7 infringes the one or more of the '835, '505, '543, '734, '349, '379, '880, and/or '059 patents.
8 Cisco denies that its products—or their use in Cisco's customers' networks—infringes the '835,
9 '505, '543, '734, '349, '379, '880, and/or '059 patents.

10 **JURISDICTION AND VENUE**

11 **Subject Matter Jurisdiction**

12 29. This Court has subject matter jurisdiction over Cisco's request for a declaratory
13 judgment under 28 U.S.C. §§ 2201 and 2202. This action arises under the patent laws of the
14 United States, 35 U.S.C. § 100 *et seq.*, which are within the subject matter jurisdiction of this
15 Court under 28 U.S.C. §§ 1331 and 1338(a).

16 30. Defendants' actual and threatened litigation alleging infringement of the '835,
17 '505, '543, '734, '349, '379, '880, and '059 patents by the use of Cisco's products in its
18 customers' telecommunications networks has created an actual and justiciable controversy as to
19 the noninfringement and invalidity of those patents.

20 31. Defendants' infringement allegations threaten actual and imminent injury to Cisco
21 that can be redressed by judicial relief and that injury is of sufficient immediacy and reality to
22 warrant the issuance of a declaratory judgment. Absent a declaration of noninfringement and/or
23 invalidity, Defendants' continued wrongful assertions of infringement through the use of Cisco's
24 products will cause Cisco irreparable harm.

1 **Personal Jurisdiction**

2 32. Defendants are subject to general and specific personal jurisdiction in this judicial
3 district based upon their purposeful, systematic, and continuous contacts with California.

4 33. For example, Defendants have purposefully availed themselves of benefits and
5 protection offered by courts located in the State of California. TR Labs has brought suit for
6 patent infringement in this district no fewer than five times during the past five years: *Alberta*
7 *Telecommunications Research Centre v. Texas Instruments, Inc.*, C.A. No. 09-cv-4548 (N.D.
8 Cal.) (filed Sept. 25, 2009); *Alberta Telecommunications Research Centre v. Dell Inc.*, C.A. No.
9 09-cv-3400 (N.D. Cal.) (filed July 24, 2009); *Alberta Telecommunications Research Centre v.*
10 *Axiom Memory Solutions, et al.*, C.A. No. 09-cv-729 (N.D. Cal.) (filed Feb. 18, 2009); *Alberta*
11 *Telecommunications Research Centre v. Sony Corp., et al.*, C.A. No. 08-cv-3408 (N.D. Cal.)
12 (filed July 15, 2008); *Alberta Telecommunications Research Centre v. Samsung Electronics Co.,*
13 *et al.*, C.A. No. 07-cv-2416 (N.D. Cal.) (filed May 4, 2007).

14 34. Upon information and belief, Defendants maintain a website at
15 <http://www.trlabs.ca/trlabs/>, which is accessible to residents of the State of California and in this
16 district. Defendants solicit membership in their organization and offer to license their patents on
17 their website.

18 35. Upon information and belief, Defendants maintain significant relationships with
19 companies based in California. For example, an article dated March 1, 2012 posted on
20 Defendants' website touts as a "success story" their "very broad and supportive relationship"
21 with Starscriber Corporation, a company based in California. *See*
22 <http://www.trlabs.ca/trlabs/about/successstories/paststories/03012012.html>.

23 36. Upon information and belief, Defendants have licensed or have offered to license
24 their patents to other companies based in California or doing business in California, including
25 several of the companies that they sued for patent infringement in this district. *See*
26 <http://www.trlabs.ca/trlabs/about/mediaroom/news/08062009.html>.

1 **Venue**

2 37. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of
3 the events giving rise to the claims at issue occurred in this judicial district and because
4 Defendants are subject to personal jurisdiction within this judicial district.

5 **COUNT I (NON-INFRINGEMENT OF THE '835 PATENT)**

6 38. Cisco restates the allegations set forth in paragraphs 1 to 37 and incorporates them
7 by reference as though set forth fully herein.

8 39. No claim of the '835 patent has been or is infringed, either directly or indirectly,
9 by Cisco or its customers through their use of Cisco's products in their telecommunications
10 networks.

11 40. As a result of the acts described in the foregoing paragraphs, there exists a
12 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
13 declaratory judgment.

14 **COUNT II (INVALIDITY OF THE '835 PATENT)**

15 41. Cisco restates the allegations set forth in paragraphs 1 to 40 and incorporates them
16 by reference as though set forth fully herein.

17 42. The claims of the '835 patent are invalid for failure to comply with the
18 requirements of the patent laws of the United States, including but not limited to the provisions
19 of 35 U.S.C. §§ 101, 102, 103, and/or 112.

20 43. As a result of the acts described in the foregoing paragraphs, there exists a
21 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
22 declaratory judgment.

23 **COUNT III (NON-INFRINGEMENT OF THE '505 PATENT)**

24 44. Cisco restates the allegations set forth in paragraphs 1 to 43 and incorporates them
25 by reference as though set forth fully herein.

1 45. No claim of the '505 patent has been or is infringed, either directly or indirectly,
2 by Cisco or its customers through their use of Cisco's products in their telecommunications
3 networks.

4 46. As a result of the acts described in the foregoing paragraphs, there exists a
5 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
6 declaratory judgment.

7 **COUNT IV (INVALIDITY OF THE '505 PATENT)**

8 47. Cisco restates the allegations set forth in paragraphs 1 to 46 and incorporates them
9 by reference as though set forth fully herein.

10 48. The claims of the '505 patent are invalid for failure to comply with the
11 requirements of the patent laws of the United States, including but not limited to the provisions
12 of 35 U.S.C. §§ 101, 102, 103, and/or 112.

13 49. As a result of the acts described in the foregoing paragraphs, there exists a
14 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
15 declaratory judgment.

16 **COUNT V (NON-INFRINGEMENT OF THE '543 PATENT)**

17 50. Cisco restates the allegations set forth in paragraphs 1 to 49 and incorporates them
18 by reference as though set forth fully herein.

19 51. No claim of the '543 patent has been or is infringed, either directly or indirectly,
20 by Cisco or its customers through their use of Cisco's products in their telecommunications
21 networks.

22 52. As a result of the acts described in the foregoing paragraphs, there exists a
23 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
24 declaratory judgment.

1 61. As a result of the acts described in the foregoing paragraphs, there exists a
2 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
3 declaratory judgment.

4 **COUNT IX (NON-INFRINGEMENT OF THE '349 PATENT)**

5 62. Cisco restates the allegations set forth in paragraphs 1 to 61 and incorporates them
6 by reference as though set forth fully herein.

7 63. No claim of the '349 patent has been or is infringed, either directly or indirectly,
8 by Cisco or its customers through their use of Cisco's products in their telecommunications
9 networks.

10 64. As a result of the acts described in the foregoing paragraphs, there exists a
11 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
12 declaratory judgment.

13 **COUNT X (INVALIDITY OF THE '349 PATENT)**

14 65. Cisco restates the allegations set forth in paragraphs 1 to 64 and incorporates them
15 by reference as though set forth fully herein.

16 66. The claims of the '349 patent are invalid for failure to comply with the
17 requirements of the patent laws of the United States, including but not limited to the provisions
18 of 35 U.S.C. §§ 101, 102, 103, and/or 112.

19 67. As a result of the acts described in the foregoing paragraphs, there exists a
20 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
21 declaratory judgment.

22 **COUNT XI (NON-INFRINGEMENT OF THE '379 PATENT)**

23 68. Cisco restates the allegations set forth in paragraphs 1 to 67 and incorporates them
24 by reference as though set forth fully herein.

1 Respectfully submitted,

2
3 WILMER CUTLER PICKERING HALE AND
DORR LLP

4
5 /s/ Keith L. Slenkovich

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17 *Attorneys for Plaintiff Cisco Systems, Inc.*

18 July 6, 2012

DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial for all issues so triable.

Respectfully submitted,

WILMER CUTLER PICKERING HALE AND
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Attorneys for Plaintiff Cisco Systems, Inc.

July 6, 2012

PROOF OF SERVICE

I am a citizen of the United States and reside in the State of California. I am employed in Santa Clara County, State of California. I am over the age of eighteen years, and not a party to the within action. My business address is 950 Page Mill Road, Palo Alto, California, 94304.

On July 6, 2012, I served a true copy of the foregoing document(s) described as:

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

BY U.S. MAIL: By putting a true and correct copy thereof, together with a signed copy of this declaration in a sealed envelope with postage thereon fully prepaid, in the United States mail at Palo Alto, California addressed as set forth below. I am readily familiar with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

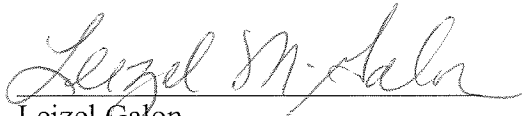
SERVICE LIST

**ALBERTA TELECOMMUNICATIONS
RESEARCH CENTRE D/B/A TR LABS
c/o 4500, 855 Second Street S.W.,
Calgary, Alberta
Canada**

**TR TECHNOLOGIES, INC.
4500, 855 Second Street S.W.,
Calgary, Alberta
Canada**

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 6, 2012, at Palo Alto, California.


Leizel Galon