

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

U.S. Ethernet Innovations, LLC,

Plaintiff,

vs.

AT&T Mobility, LLC; Barnes & Noble, Inc.;
Claire's Stores, Inc.; Claire's Boutiques, Inc.; J.
C. Penney Company, Inc.; Sally Beauty
Holdings, Inc.; Home Depot U.S.A., Inc.; Ann
Taylor Stores Corporation; Ann Taylor Retail,
Inc.; Harley-Davidson, Inc.; Harley-Davidson
Motor Company, Inc.; Kirkland's Inc.;
Kirkland's Stores, Inc.; Macy's, Inc.; Macy's
Retail Holdings, Inc.; Macy's West Stores,
Inc.; New York & Company, Inc.; Lerner New
York, Inc.; Radioshack Corporation; Rent-A-
Center, Inc.; Target Corporation; and The
Dress Barn, Inc.,

Defendants.

Civil Action File No.
6:10-cv-86-LED-JDL

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff U.S. Ethernet Innovations, LLC ("USEI") hereby makes this First Amended Complaint for patent infringement against Defendants AT&T Mobility, LLC; Barnes & Noble, Inc.; Claire's Stores, Inc.; Claire's Boutiques, Inc.; J. C. Penney Company, Inc.; Sally Beauty Holdings, Inc.; Home Depot U.S.A., Inc.; Ann Taylor Stores Corporation; Ann Taylor Retail, Inc.; Harley-Davidson, Inc.; Harley-Davidson Motor Company, Inc.; Kirkland's Inc.; Kirkland's Stores, Inc.; Macy's, Inc.; Macy's Retail Holdings, Inc.; Macy's West Stores, Inc.; New York & Company, Inc.; Lerner New York, Inc.; Radioshack Corporation; Rent-A-Center, Inc.; Target

Corporation; and The Dress Barn, Inc. (collectively, “Defendants”), respectfully showing the Court as follows:

NATURE OF THE ACTION

1. Plaintiff USEI is a Tyler, Texas-based company that owns the fundamental ethernet technology developed by 3Com Corporation in the 1990s. USEI owns United States Patent Nos. 5,307,459 (the “‘459 Patent”), 5,434,872 (the “‘872 Patent”), 5,732,094 (the “‘094 Patent”), and 5,299,313 (the “‘313 Patent”).

2. Defendants have made, used, imported, and/or sold and/or continues to make, use, import, and/or sell the technology claimed by the ‘459 Patent, the ‘872 Patent, the ‘094 Patent, and the ‘313 Patent in systems and methods without USEI’s permission.

3. Plaintiff USEI seeks damages for the Defendants’ infringement of the ‘459 Patent, the ‘872 Patent, the ‘094 Patent, and the ‘313 Patent.

PARTIES

4. Plaintiff USEI is a Texas limited liability corporation. USEI’s principal place of business is in Tyler, Texas.

5. On information and belief, AT&T Mobility, LLC (“AT&T”) is a corporation organized and existing under the laws of Delaware, with a principal place of business at 1025 Lenox Park Boulevard, Atlanta, Georgia 30319-5309. AT&T can be served with process through its registered agent, CT Corporation System, 350 N. Saint Paul St., Dallas, Texas 75201-4240.

6. On information and belief, Barnes & Noble, Inc. (“Barnes & Noble”) is a corporation organized and existing under the laws of Delaware, with a principal place of

business at 122 Fifth Ave., New York, New York 10011-5605. Barnes & Noble can be served with process through its registered agent, Capitol Corporate Services, Inc., 800 Brazos St., Suite 400, Austin, Texas 78701-2548.

7. On information and belief, Claire's Stores, Inc. is a corporation organized and existing under the laws of Florida, with a principal place of business at 2400 West Central Road, Hoffman Estates, Illinois 60195. Claire's can be served with process through its registered agent, CT Corporation System, 1200 S. Pine Island Rd., Plantation, Florida 33324-4413. On information and belief, Claire's Boutiques, Inc. is a corporation organized and existing under the laws of Colorado, with a principal place of business at 3 SW 129th Avenue, Suite 400, Pembroke Pines, Florida 33027-1175. Claire's Boutiques, Inc. can be served with process through its registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201. Claire's Stores, Inc. and Claire's Boutiques, Inc. will be referred to herein individually and collectively as the "Claire's Defendants."

8. On information and belief, J. C. Penney Company, Inc. ("J. C. Penney") is a corporation organized and existing under the laws of Delaware, with a principal place of business at 6501 Legacy Drive, Plano, Texas 75024-3698. J. C. Penney can be served with process through its registered agent, CT Corporation System, 350 N. Saint Paul St., Dallas, Texas 75201-4240.

9. On information and belief, Sally Beauty Holdings, Inc. ("Sally Beauty") is a corporation organized and existing under the laws of Delaware, with a principal place of business at 3001 Colorado Boulevard, Denton, Texas 76210. Sally Beauty can be served with

process through its registered agent, CT Corporation System, 350 N. Saint Paul St., Dallas, Texas 75201-4240.

10. On information and belief, Home Depot U.S.A., Inc. (“Home Depot”) is a corporation organized and existing under the laws of Delaware, with a principal place of business at 2455 Paces Ferry Rd., Atlanta, Georgia 30339-1834. Home Depot can be served with process through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th St., Suite 620, Austin, Texas 78701-3334.

11. On information and belief, Ann Taylor Stores Corporation is a corporation organized and existing under the laws of Delaware, with a principal place of business at 7 Times Square, New York, New York 10036. Ann Taylor Stores Corporation can be served with process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. On information and belief, Ann Taylor Retail, Inc. is a corporation organized and existing under the laws of Delaware, with a principal place of business at 476 Wheelers Farms Rd., Milford, Connecticut 06461-9145. Ann Taylor Retail, Inc. can be served with process through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. Ann Taylor Stores Corporation and Ann Taylor Retail, Inc. will be referred to herein individually and collectively as the “Ann Taylor Defendants.”

12. On information and belief, Harley-Davidson, Inc. is a corporation organized and existing under the laws of Wisconsin, with a principal place of business at 3700 West Juneau Avenue, Milwaukee, Wisconsin 53208. Harley-Davidson, Inc. can be served with process through its registered agent, CT Corporation System, 8040 Excelsior Drive, Suite 200, Madison,

Wisconsin 53717. On information and belief, Harley-Davidson Motor Company, Inc. is a corporation organized and existing under the laws of Wisconsin, with a principal place of business at 3700 West Juneau Avenue, Milwaukee, Wisconsin 53208. Harley-Davidson Motor Company, Inc. can be served with process through its registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201. Harley-Davidson, Inc. and Harley-Davidson Motor Company, Inc. will be referred to herein individually and collectively as the “Harley-Davidson Defendants.”

13. On information and belief, Kirkland’s Inc. is a corporation organized and existing under the laws of Tennessee, with a principal place of business at 2501 McGavock Pike, Suite 1000, Nashville, Tennessee 37214. Kirkland’s Inc. can be served with process through its registered agent, Lowell Pugh, 2501 McGavock Pike, Suite 1000, Nashville, Tennessee 37214. On information and belief, Kirkland’s Stores, Inc. is a corporation organized and existing under the laws of Tennessee, with a principal place of business at 431 Smith Lane, Jackson, Tennessee 38301-9670. Kirkland’s Stores, Inc. can be served with process through its registered agent, National Registered Agents, Inc., 16055 Space Center, Suite 235, Houston, Texas 77062. Kirkland’s Inc. and Kirkland’s Stores, Inc. will be referred to herein individually and collectively as the “Kirkland’s Defendants.”

14. On information and belief, Macy’s, Inc. is a corporation organized and existing under the laws of Delaware, with a principal place of business at 7 West Seventh Street, Cincinnati, Ohio 45202. Macy’s, Inc. can be served with process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. On information and belief, Macy’s Retail Holdings, Inc. is a corporation organized and existing

under the laws of New York, with a principal place of business at 7 West Seventh Street, Cincinnati, Ohio 45202-2424. Macy's Retail Holdings, Inc. can be served with process through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701. On information and belief, Macy's West Stores, Inc. is a corporation organized and existing under the laws of Ohio, with a principal place of business at 7 West Seventh Street, Cincinnati, Ohio 45202-2424. Macy's West Stores, Inc. can be served with process through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701. Macy's, Inc., Macy's Retail Holdings, Inc., and Macy's West Stores, Inc. will be referred to herein individually and collectively as the "Macy's Defendants."

15. On information and belief, New York & Company, Inc. is a corporation organized and existing under the laws of Delaware, with a principal place of business at 450 West 33rd Street, 5th Floor, New York, New York 10001. New York & Company, Inc. can be served with process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. On information and belief, Lerner New York, Inc. is a corporation organized and existing under the laws of Delaware, with a principal place of business at 450 West 33rd Street, 5th Floor, New York, New York 10001. Lerner New York, Inc. can be served with process through its registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201. New York & Company, Inc. and Lerner New York, Inc. will be referred to herein individually and collectively as the "New York & Company Defendants."

16. On information and belief, Radioshack Corporation (“Radioshack”) is a corporation organized and existing under the laws of Delaware, with a principal place of business at 300 RadioShack Circle, Fort Worth, Texas 76102. Radioshack can be served with process through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Inc., 211 E. 7th Street, Suite 620, Austin, Texas 78701.

17. On information and belief, Rent-A-Center, Inc. (“Rent-A-Center”) is a corporation organized and existing under the laws of Delaware, with a principal place of business at 5501 Headquarters Drive, Plano, Texas 75024. Rent-A-Center can be served with process through its registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

18. On information and belief, Target Corporation (“Target”) is a corporation organized and existing under the laws of Minnesota, with a principal place of business at 1000 Nicollet Mall, Minneapolis, Minnesota 55403-2467. Target can be served with process through its registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201.

19. On information and belief, The Dress Barn, Inc. (“The Dress Barn”) is a corporation organized and existing under the laws of Connecticut, with a principal place of business at 30 Dunnigan Drive, Suffern, New York 10901-4101. The Dress Barn can be served with process through its registered agent, Prentice Hall Corporation System, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

JURISDICTION AND VENUE

20. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*

21. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

22. 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).

23. On information and belief, Defendants are subject to this Court's general and specific 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: (1) a portion of the infringements alleged herein, including making, using, importing, selling, and/or offering to sell products, methods, and systems that infringe the claims of the '459 Patent, the '872 Patent, the '094 Patent, and/or the '313 Patent; (2) the presence of established distribution channels in this forum; and (3) 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.

PATENTS-IN-SUIT

24. The '459 Patent, entitled "Network Adapter with Host Indication Optimization," was duly and legally issued on April 26, 1994 by the U.S. Patent and Trademark Office to 3Com Corporation, the assignee of the named inventors Brian Petersen, W. Paul Sherer, David R. Brown, and Lai-Chin Lo. A true and correct copy of the '459 Patent is attached hereto as Exhibit A.

25. The '872 Patent, entitled "Apparatus for Automatic Initiation of Data Transmission," was duly and legally issued on July 18, 1995 by the U.S. Patent and Trademark Office to 3Com Corporation, the assignee of the named inventors Brian Petersen, David R. Brown, and W. Paul Sherer. A true and correct copy of the '872 Patent is attached hereto as Exhibit B.

26. The '094 Patent, entitled "Method for Automatic Initiation of Data Transmission," was duly and legally issued on March 24, 1998 by the U.S. Patent and Trademark Office to 3Com Corporation, the assignee of the named inventors Brian Petersen, David R. Brown, and W. Paul Sherer. A true and correct copy of the '094 Patent is attached hereto as Exhibit C.

27. The '313 Patent, entitled "Network Interface with Host Independent Buffer Management," was duly and legally issued on March 29, 1994 by the U.S. Patent and Trademark Office to 3Com Corporation, the assignee of the named inventors Brian Petersen, W. Paul Sherer, David R. Brown, and Lai-Chin Lo. A true and correct copy of the '313 Patent is attached hereto as Exhibit D.

28. USEI is the sole owner of the entire right, title, and interest in the '459 Patent, the '872 Patent, the '094 Patent, and the '313 Patent (collectively, the "Patents-in-Suit") by virtue of assignment, including all rights necessary to prosecute this case and collect all damages, past, present and future, resulting from Defendants' infringement.

COUNT I

PATENT INFRINGEMENT

29. USEI restates and realleges the allegations set forth in paragraphs 1 through 28 of this Complaint and incorporates them by reference.

30. Without a license or permission from USEI, Defendants infringed and continue to infringe one or more claims of the '459 Patent, the '872 Patent, the '094 Patent, and/or the '313 Patent, directly by using products and devices that embody the patented inventions, including, without limitation, one or more of the following products: laptop computers, point-of-sale equipment, personal computers, computer servers, copiers, and printers. In addition, AT&T directly contributes to and induces infringement through supplying infringing systems and components to customers. AT&T's customers who purchase systems and components thereof and operate such systems and components thereof in accordance with AT&T's instructions directly infringe one or more claims of the '459 Patent, the '872 Patent, the '094 Patent, and/or the '313 Patent. The acts of infringement by the Defendants have caused damage to USEI, and USEI is entitled to recover from the Defendants for damages sustained by USEI in an amount subject to proof at trial. The infringement of USEI's exclusive rights under the Patents-in-Suit by the Defendants will continue to damage USEI, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court. The Defendants have had actual or constructive knowledge of the Patents-in-Suit, yet continue to infringe said patents. The infringement of the Patents-in-Suit by the Defendants is willful and deliberate, entitling USEI to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, USEI prays for the following relief against Defendants:

- A. A judgment that Defendants, as set forth above, have infringed the '459 Patent, the '872 Patent, the '094 Patent, and/or the '313 Patent;
- B. An award of all damages recoverable under the laws of the United States and the laws of the State of Texas in an amount to be proven at trial;
- C. An award of treble damages pursuant to 35 U.S.C. § 284 against Defendants, and each of them, as a result of Defendant's willful infringement;
- D. A preliminary, and thereafter permanent, injunction enjoining and restraining Defendants, and each of them, and their officers, directors, agents, servants, employees, attorneys, and all others acting under, by or through them, from infringing the '459 Patent, the '872 Patent, the '094 Patent, and/or the '313 Patent, as set forth herein;
- E. A judgment and order requiring Defendants, and each of them, to pay USEI pre-judgment and post-judgment interest on the full amounts of the damages awarded;
- F. A judgment requiring Defendants, and each of them, to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285, with prejudgment interest; and
- G. Such other and further relief as this Court may deem just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands that all issues so triable be determined by a jury.

Respectfully submitted, this 19th day of May, 2010.

WARD & SMITH LAW FIRM

/s/ Peter M. Jones

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Peter M. Jones

Peter M. Jones