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13 U.S. Ethernet Innovations, LLC

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA**
16 **OAKLAND DIVISION**

17 U.S. ETHERNET INNOVATIONS, LLC,) Case No. 4:10-cv-05254-CW
18)
19 Plaintiff,) [Related Cases: 4:10-cv-03724-CW and
vs.) 4:10-cv-03481-CW]
20)

21 AT&T Mobility, LLC; AT&T Services, Inc.;)
Barnes & Noble, Inc.; Claire’s Boutiques, Inc.;) **PLAINTIFF U.S. ETHERNET**
22 J.C. Penney Company, Inc.; Sally Beauty) **INNOVATIONS, LLC’S SECOND**
Holdings, Inc.; Ann Taylor Stores Corporation;) **AMENDED COMPLAINT**
23 Ann Taylor Retail, Inc.; Harley-Davidson, Inc.;) **FOR PATENT INFRINGEMENT**
Harley-Davidson Motor Company, Inc.;)

24 Kirkland’s Inc.; Kirkland’s Stores, Inc.; Macy’s,) **JURY TRIAL DEMANDED**
Inc.; Macy’s Retail Holdings, Inc.; Macy’s West)
25 Stores, Inc.; New York & company, Inc.; Lerner)
New York, Inc.; Radioshack Corporation; Rent-)

26 A-Center, Inc.; and The Dress Barn, Inc.,)
Judge: Hon. Claudia Wilken
27)

28 Defendants.)

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SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff U.S. Ethernet Innovations, LLC (“USEI”) hereby makes this Second Amended Complaint for patent infringement against Defendants AT&T Mobility, LLC; AT&T Services, Inc.; Barnes & Noble, Inc.; Claire’s Boutiques, Inc.; J. C. Penney Company, Inc.; Sally Beauty Holdings, 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.; 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 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 Mobility, LLC can be served with process through its registered agent, CT Corporation System, 350 N. Saint Paul St., Dallas, Texas 75201-4240. AT&T Services, Inc. is a corporation organized and existing under the laws of Delaware, with a principal place of business at 175 E Houston ST FL 8, San Antonio, Texas 78205-2255.

1 AT&T Services, Inc. can be served with process through its registered agent, CT Corporation
2 System, 818 W Seventh Street, Los Angeles, California 90017. AT&T Mobility, LLC and
3 AT&T Services, Inc. will be referred to herein individually and collectively as “AT&T.”

4 6. On information and belief, Barnes & Noble, Inc. (“Barnes & Noble”) is a
5 corporation organized and existing under the laws of Delaware, with a principal place of
6 business at 122 Fifth Ave., New York, New York 10011-5605. Barnes & Noble can be served
7 with process through its registered agent, Capitol Corporate Services, Inc., 800 Brazos St., Suite
8 400, Austin, Texas 78701-2548.

9 7. On information and belief, Claire’s Boutiques, Inc. (“Claire’s”) is a corporation
10 organized and existing under the laws of Colorado, with a principal place of business at 3 SW
11 129th Avenue, Suite 400, Pembroke Pines, Florida 33027-1175. Claire’s can be served with
12 process through its registered agent, CT Corporation System, 350 N. St. Paul Street, Suite 2900,
13 Dallas, Texas 75201.

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

19 9. On information and belief, Sally Beauty Holdings, Inc. (“Sally Beauty”) is a
20 corporation organized and existing under the laws of Delaware, with a principal place of
21 business at 3001 Colorado Boulevard, Denton, Texas 76210. Sally Beauty can be served with
22 process through its registered agent, CT Corporation System, 350 N. Saint Paul St., Dallas,
23 Texas 75201-4240.

24 10. On information and belief, Ann Taylor Stores Corporation is a corporation
25 organized and existing under the laws of Delaware, with a principal place of business at 7 Times
26 Square, New York, New York 10036. Ann Taylor Stores Corporation can be served with
27 process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite
28 400, Wilmington, Delaware 19808. On information and belief, Ann Taylor Retail, Inc. is a

1 corporation organized and existing under the laws of Delaware, with a principal place of
2 business at 476 Wheelers Farms Rd., Milford, Connecticut 06461-9145. Ann Taylor Retail, Inc.
3 can be served with process through its registered agent, Corporation Service Company, 211 E.
4 7th Street, Suite 620, Austin, Texas 78701. Ann Taylor Stores Corporation and Ann Taylor
5 Retail, Inc. will be referred to herein individually and collectively as the “Ann Taylor
6 Defendants.”

7 11. On information and belief, Harley-Davidson, Inc. is a corporation organized and
8 existing under the laws of Wisconsin, with a principal place of business at 3700 West Juneau
9 Avenue, Milwaukee, Wisconsin 53208. Harley-Davidson, Inc. can be served with process
10 through its registered agent, CT Corporation System, 8040 Excelsior Drive, Suite 200, Madison,
11 Wisconsin 53717. On information and belief, Harley-Davidson Motor Company, Inc. is a
12 corporation organized and existing under the laws of Wisconsin, with a principal place of
13 business at 3700 West Juneau Avenue, Milwaukee, Wisconsin 53208. Harley-Davidson Motor
14 Company, Inc. can be served with process through its registered agent, CT Corporation System,
15 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201. Harley-Davidson, Inc. and Harley-
16 Davidson Motor Company, Inc. will be referred to herein individually and collectively as the
17 “Harley-Davidson Defendants.”

18 12. On information and belief, Kirkland’s Inc. is a corporation organized and existing
19 under the laws of Tennessee, with a principal place of business at 2501 McGavock Pike, Suite
20 1000, Nashville, Tennessee 37214. Kirkland’s Inc. can be served with process through its
21 registered agent, Lowell Pugh, 2501 McGavock Pike, Suite 1000, Nashville, Tennessee 37214.
22 On information and belief, Kirkland’s Stores, Inc. is a corporation organized and existing under
23 the laws of Tennessee, with a principal place of business at 431 Smith Lane, Jackson, Tennessee
24 38301-9670. Kirkland’s Stores, Inc. can be served with process through its registered agent,
25 National Registered Agents, Inc., 16055 Space Center, Suite 235, Houston, Texas 77062.
26 Kirkland’s Inc. and Kirkland’s Stores, Inc. will be referred to herein individually and collectively
27 as the “Kirkland’s Defendants.”

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1 13. On information and belief, Macy's, Inc. is a corporation organized and existing
2 under the laws of Delaware, with a principal place of business at 7 West Seventh Street,
3 Cincinnati, Ohio 45202. Macy's, Inc. can be served with process through its registered agent,
4 Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.
5 On information and belief, Macy's Retail Holdings, Inc. is a corporation organized and existing
6 under the laws of New York, with a principal place of business at 7 West Seventh Street,
7 Cincinnati, Ohio 45202-2424. Macy's Retail Holdings, Inc. can be served with process through
8 its registered agent, Corporation Service Company d/b/a CSC-Lawyers Inc., 211 E. 7th Street,
9 Suite 620, Austin, Texas 78701. On information and belief, Macy's West Stores, Inc. is a
10 corporation organized and existing under the laws of Ohio, with a principal place of business at 7
11 West Seventh Street, Cincinnati, Ohio 45202-2424. Macy's West Stores, Inc. can be served with
12 process through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Inc., 211
13 E. 7th Street, Suite 620, Austin, Texas 78701. Macy's, Inc., Macy's Retail Holdings, Inc., and
14 Macy's West Stores, Inc. will be referred to herein individually and collectively as the "Macy's
15 Defendants."

16 14. On information and belief, New York & Company, Inc. is a corporation organized
17 and existing under the laws of Delaware, with a principal place of business at 450 West 33rd
18 Street, 5th Floor, New York, New York 10001. New York & Company, Inc. can be served with
19 process through its registered agent, Corporation Service Company, 2711 Centerville Road, Suite
20 400, Wilmington, Delaware 19808. On information and belief, Lerner New York, Inc. is a
21 corporation organized and existing under the laws of Delaware, with a principal place of
22 business at 450 West 33rd Street, 5th Floor, New York, New York 10001. Lerner New York,
23 Inc. can be served with process through its registered agent, CT Corporation System, 350 N. St.
24 Paul Street, Suite 2900, Dallas, Texas 75201. New York & Company, Inc. and Lerner New
25 York, Inc. will be referred to herein individually and collectively as the "New York & Company
26 Defendants."

27 15. On information and belief, Radioshack Corporation ("Radioshack") is a
28 corporation organized and existing under the laws of Delaware, with a principal place of

1 business at 300 RadioShack Circle, Fort Worth, Texas 76102. Radioshack can be served with
2 process through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Inc., 211
3 E. 7th Street, Suite 620, Austin, Texas 78701.

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

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

14 **JURISDICTION AND VENUE**

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

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

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

21 21. On information and belief, Defendants are subject to this Court’s general and
22 specific personal jurisdiction consistent with the principles of due process and/or the California
23 Long Arm Statute, due at least to their substantial business in this forum, including: (1) a portion
24 of the infringements alleged herein, including making, using, importing, selling, and/or offering
25 to sell products, methods, and systems that infringe the claims of the ‘459 Patent, the ‘872
26 Patent, the ‘094 Patent, and/or the ‘313 Patent; (2) the presence of established distribution
27 channels in this forum; and (3) regularly doing or soliciting business, engaging in other persistent
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1 courses of conduct, and/or deriving substantial revenue from goods and services provided to
2 individuals in Texas and in this judicial district.

3 **PATENTS-IN-SUIT**

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

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

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

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

24 26. USEI is the sole owner of the entire right, title, and interest in the '459 Patent, the
25 '872 Patent, the '094 Patent, and the '313 Patent (collectively, the "Patents-in-Suit") by virtue of
26 assignment, including all rights necessary to prosecute this case and collect all damages, past,
27 present and future, resulting from Defendants' infringement.

28

1 **COUNT I**

2 **PATENT INFRINGEMENT**

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

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

23 **PRAYER FOR RELIEF**

24 WHEREFORE, USEI prays for the following relief against Defendants:

25 A. A judgment that Defendants, as set forth above, have infringed the '459 Patent,
26 the '872 Patent, the '094 Patent, and/or the '313 Patent;

27 B. An award of all damages recoverable under the laws of the United States and the
28 laws of the State of California in an amount to be proven at trial;

1 C. An award of treble damages pursuant to 35 U.S.C. § 284 against Defendants, and
2 each of them, as a result of Defendant’s willful infringement;

3 D. A preliminary, and thereafter permanent, injunction enjoining and restraining
4 Defendants, and each of them, and their officers, directors, agents, servants, employees,
5 attorneys, and all others acting under, by or through them, from infringing the ‘459 Patent, the
6 ‘872 Patent, the ‘094 Patent, and/or the ‘313 Patent, as set forth herein;

7 E. A judgment and order requiring Defendants, and each of them, to pay USEI pre-
8 judgment and post-judgment interest on the full amounts of the damages awarded;

9 F. A judgment requiring Defendants, and each of them, to pay the costs of this action
10 (including all disbursements) and attorneys’ fees as provided by 35 U.S.C. § 285, with
11 prejudgment interest; and

12 G. Such other and further relief as this Court may deem just and equitable.

13 **DEMAND FOR JURY TRIAL**

14 29. Plaintiff hereby demands that all issues so triable be determined by a jury.
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18 DATED: February 15, 2013

ROBBINS GELLER RUDMAN
& DOWD LLP

21 /s/ Ryan K. Walsh
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Attorneys for U.S. Ethernet Innovations, LLC

CERTIFICATE OF SERVICE

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I hereby certify that on February 15, 2013, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel of record who have consented to accept service of this document by electronic mail.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Ryan K. Walsh
RYAN K. WALSH