

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

QUALITY EXPERIENCE TESTING LLC

v.

JDS UNIPHASE CORPORATION

NO. _____

JURY TRIAL DEMANDED

PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Quality Experience Testing LLC (formerly known as Qexez, LLC) (hereinafter, “QET” or “Plaintiff”) by and through its undersigned counsel, files this Original Complaint against Defendant JDS Uniphase Corporation (hereinafter, referred to as “JDSU” or “Defendant”), as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of Plaintiff’s United States Patent No. 7,596,373 entitled “Method and System For Quality of Service (QOS) Monitoring For Wireless Devices” (hereinafter, the “373 patent” or the “Patent-in-Suit”). QET is the assignee of the Patent-in-Suit. QET seeks injunctive relief and monetary damages.

PARTIES

2. Plaintiff Quality Experience Testing LLC is a limited liability company organized and existing under the laws of Texas with its principal place of business at 430 North Center Street, Suite 100, Longview, Texas 75601. QET is the assignee of all title and interest of the Patent-in-Suit. Plaintiff possesses the entire right to sue for infringement and recover past damages.

3. Upon information and belief, Defendant JDS Uniphase Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 430 North McCarthy Blvd, Milpitas, CA 95035.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over the Defendant, including because Defendant has minimum contacts within the State of Texas, and the Eastern District of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of Texas and within the Eastern District of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

6. More specifically, Defendant, directly and/or through intermediaries, utilizes, distributes, offers for sale, sells, advertises, uses, performs, and/or maintains wireless test solutions that practice methods of monitoring quality of service associated with a packet-based wireless network in the United States, the State of Texas, and the Eastern District of Texas. Defendant has committed patent infringement in the State of Texas and in the Eastern District of Texas, and/or has induced others to commit and/or has contributed to patent infringement in the State of Texas and in the Eastern District of Texas. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Defendant has paying customers who are residents of the State of Texas and the Eastern District of Texas and who use the Defendant's products and services in the State of Texas and in the Eastern District of Texas.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b), including because Defendant has purposefully availed itself of the privileges of

conducting business in the Eastern District of Texas; Defendant regularly conducts business within the Eastern District of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the Eastern District of Texas.

8. More specifically, Defendant, directly and/or through intermediaries, utilizes, distributes, offers for sale, sells, advertises, uses, performs, and/or maintains wireless test solutions that practice methods of monitoring quality of service associated with a packet-based wireless network in the Eastern District of Texas. Defendant has committed patent infringement in the the Eastern District of Texas, and/or has induced others to commit and/or has contributed to patent infringement in the Eastern District of Texas. Defendant solicits customers in the State of Texas and in the Eastern District of Texas. Defendant has paying customers who are residents of the State of Texas and the Eastern District of Texas and who use the Defendant's products and services in the State of Texas and in the Eastern District of Texas.

COUNT I – PATENT INFRINGEMENT

9. QET refers to and incorporates herein the allegations of Paragraphs 1-8 above.

10. United States Patent No. 7,596,373 entitled "Method and System For Quality of Service (QOS) Monitoring For Wireless Devices" was duly and legally issued by the United States Patent and Trademark Office on September 29, 2009 after full and fair examination. Plaintiff is the assignee of all rights, title, and interest in and to the '373 patent and possesses all rights of recovery under the '373 patent including the right to sue for infringement and recover past damages.

11. Plaintiff is informed and believes that Defendant utilizes, uses, performs, maintains, operates, advertises, controls, sells, and otherwise provides hardware and software for, without limitation, a method of monitoring quality of service associated with a packet-based wireless

network, the wireless network including at least one wireless device and a fixed transceiver wherein the wireless device comprises a mobile handset having an internal processor, an internal memory and a user input for input of data by a user of the wireless device, the method comprising: embedding a program in the processor for processing quality of service data in the handset, monitoring, by the wireless device, communication data packets associated with a communication link established between the wireless device and the wireless network; determining at least one quality of service metric to measure with respect to a user of the wireless device; receiving quality of service data from the communication data packets relevant to determine a quality of service; storing quality of service data in the memory of the handset; processing the quality of service data in the handset in a manner relevant to determining the quality of service using the embedded quality of service program in the processor; and, wirelessly providing the processed data to the fixed transceiver wherein at least one quality of service data is input by the user using the wireless device.” Plaintiff is informed and believes that Defendant infringes the ‘373 patent by and through at least RANAdvisor systems, apparatus and methods.

12. Additionally, or in the alternative, upon information and belief, Plaintiff is informed and believes that Defendant has induced infringement of the ‘373 patent in the State of Texas, in this judicial district, and elsewhere in the United States, by actions comprising intentionally inducing infringement of the ‘337 patent in this judicial district, and elsewhere in the United States, including by aiding or abetting at least customers and other end users to use said system, apparatuses and methods. Upon information and belief, such induced infringement has occurred at least since each Defendant became aware of the ‘337 patent, which was at least on or about October 12, 2012, and Defendant’s inducement of infringement involves Defendant’s knowledge that the induced acts constitute patent infringement.

13. Additionally, or in the alternative, upon information and belief, Plaintiff is informed and believes that Defendant has contributed to infringement of the '337 patent in the State of Texas, in this judicial district, and elsewhere in the United States, by actions comprising contributing to at least the use of said systems, apparatuses and methods by customers and/or other end users, and such contributory infringement necessarily involves knowledge that such systems, apparatuses and methods are especially made or especially adapted for use in an infringement of the '337 patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

14. Each of Defendant's aforesaid activities has been without authority and/or license from Plaintiffs.

15. Plaintiff is entitled to recover from the Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

16. Defendant's infringement of Plaintiff's exclusive rights under the '373 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

17. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

18. Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

A. An adjudication that one or more claims of the '373 patent has been directly and/or indirectly infringed, either literally and/or under the doctrine of equivalents, by Defendant;

B. An award to Plaintiff of damages adequate to compensate Plaintiff for the Defendant's acts of infringement together with pre-judgment and post-judgment interest;

C. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining the Defendant and all persons acting in concert therewith from further acts of infringement with respect to the claims of the Patent-in-Suit;

D. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

E. Any further relief that this Court deem just and proper.

December 3, 2013

Respectfully submitted,

/s/ John J. Edmonds

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