

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

MESSAGE NOTIFICATION
TECHNOLOGIES LLC,

Plaintiff,

v.

CISCO SYSTEMS, INC.,

Defendant.

C.A. No. 13-1879-GMS

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Message Notification Technologies LLC files this first amended complaint against the above-named defendant, alleging, based on its own knowledge with respect to itself and its own actions, and based on information and belief as to all other matters, as follows:

PARTIES

1. Plaintiff Message Notification Technologies LLC (“MessageTech”) is a limited liability company formed under the laws of the State of Delaware, with a principal place of business in Wilmington, Delaware.

2. Defendant Cisco Systems, Inc. (“Cisco”) is a Delaware corporation with a principal place of business in California. Cisco can be served with process by serving its registered agent: The Prentice-Hall Corporation System, Inc.; 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a).

4. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, defendant is incorporated in this district, has transacted business in this district, and/or has committed and/or induced acts of patent infringement in this district.

5. Defendant is subject to this Court's specific and general personal jurisdiction under due process and/or the Delaware Long Arm Statute due at least to defendant's having been incorporated in this forum and/or defendant's substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) 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 Delaware.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 5,944,786

6. On August 31, 1999, United States Patent No. 5,944,786 ("the 786 patent") was duly and legally issued by the United States Patent and Trademark Office for an invention titled "Automatic Notification of Receipt of Electronic Mail (E-mail) via Telephone System without Requiring Log-On to E-mail Server."

7. MessageTech is the owner of the 786 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 786 patent against infringers, and to collect damages for all relevant times. A true and correct copy of the 786 patent is attached hereto as Exhibit A.

8. Cisco had knowledge of the 786 patent at least from the filing date and/or service date of the original complaint against it for infringement of the 786 patent.

9. In addition, Cisco had knowledge of the 786 patent at least from the date the 786 patent was cited by Cisco or its affiliates during the prosecution of U.S. Pat. No. 7,680,253, which lists as inventors Jonathan C. Kessler and Krishna I. Sankar and was originally assigned,

as issued, to Cisco Technology, Inc. The 253 patent's application was filed on April 29, 2005. The 253 patent bears the title "Method and apparatus for remote notification of office mail delivery."

10. The patent examiner cited the 786 patent during prosecution of the 253 patent.

11. The title of the 253 patent bears similarities to the title of the 786 patent. The title of the 786 patent is "Automatic notification of receipt of electronic mail (e-mail) via telephone system without requiring log-on to e-mail server."

12. The 253 patent covers the same or substantially similar subject matter as the 786 patent.

13. The 253 patent appears to read on several claims of the 786 patent.

14. The 253 patent's inventors, Jonathan C. Kessler and Krishna I. Sankar, were involved in the prosecution of that patent.

15. Krishna Sankar was employed at Cisco Systems, Inc. for over 11 years, at least from January 2000 to April 2011, and was designated a "Distinguished Engineer." He authored a number of books that have been published by Cisco Press and are currently being sold through the Cisco Press online store. *See* <http://www.linkedin.com/in/ksankar>; <http://www.ciscopress.com/authors/bio.asp?a=9ed11cfa-9067-4205-8110-76358f317825>.

16. Krishna Sankar was employed in a number of management positions during his time at Cisco.

17. Jonathan Kessler is employed at Cisco Systems, Inc. and has been for about 15 years, since 1999. He currently acts as a "Cyber Security Program Manager." *See* <http://www.linkedin.com/pub/jonathan-kessler/7/b23/834>; <http://blogs.cisco.com/author/-JonathanKessler/>.

18. Jonathan Kessler has been employed in a number of management positions during his time at Cisco.

19. Both Krishna Sankar and Jonathan Kessler have knowledge of the 786 patent at least through their activities related to the prosecution of the 253 patent.

20. On information and belief, both Krishna Sankar and Jonathan Kessler work or worked on the accused products/instrumentalities (as defined below) or systems related to the accused products/instrumentalities.

21. By virtue of at least their positions in Cisco and their work involving the accused products/instrumentalities, Krishna Sankar and Jonathan Kessler's personal knowledge of the 786 patent should be imputed to Cisco.

22. Upon information and belief, the original assignee of the 253 patent as issued is or was a subsidiary and/or affiliate of Cisco.

23. The knowledge of the 253 patent possessed by its subsidiaries and/or affiliates should be imputed to Cisco.

24. Upon information and belief, Cisco was involved in the prosecution of the 253 patent.

25. Cisco has knowledge of the 786 patent at least due to its involvement in the prosecution of the 253 patent.

26. In addition, Cisco had knowledge of the 786 patent through its membership with RPX Corporation ("RPX"), the original assignee of U.S. Pat. No. 8,588,213. The 786 patent was cited during the prosecution of the 213 patent as prior art. This citation occurred in an Information Disclosure Statement transmitted to the PTO on Aug. 28, 2011 (and received at the

PTO on Aug. 29, 2011). The 786 patent's status as prior art cited during prosecution of the 213 patent is reflected on the face of the 213 patent as-issued.

27. Cisco joined RPX in or around Nov. 24, 2008. *See* <http://www.networkworld.com/community/node/35665> ("Cisco and IBM have signed up as among the first members of start-up RPX Corp.").

28. RPX acquires intellectual property rights on behalf of its members. According to its website:

Our market-based solution dramatically reduces patent-related costs for client companies by sharing risk across our network. We aggregate capital from annual subscription fees to acquire dangerous patents and patent rights, with each RPX client receiving a license to every asset we own.

RPX Corporation, Main Page, <http://www.rpxcorp.com/> (last visited Jan. 17, 2014).

29. RPX also offers patent advisory services to its members. According to its website:

Our insight into the patent market allows RPX to serve as an extension of a client's in-house legal team to better inform its long-term IP strategy. As necessary, we schedule client briefings to discuss our assessments of open market opportunities, relevant litigation landscape activity, key players and trends, as well as to provide specific technical and strategic analyses on potential threats.

RPX Corporation, Client Relations, <http://www.rpxcorp.com/rpx-client-relations> (last visited Jan. 17, 2014).

30. On information and belief, RPX notifies and advises its members on those patents it has or will have intellectual property rights in.

31. On information and belief, RPX notified and advised Cisco of RPX's prosecution of U.S. Pat. No. 8,588,213.

32. On information and belief, Cisco inquired into the intellectual property rights held by or projected to be held by RPX.

33. On information and belief, Cisco inquired into RPX's prosecution of U.S. Pat. No. 8,588,213.

34. Cisco thus acquired knowledge of the prosecution of the 213 patent. And through this knowledge, Cisco acquired knowledge of the 786 patent at or around Aug. 28, 2011, when the 786 patent was cited as prior art in an Information Disclosure Statement, if not earlier.

35. Cisco infringed¹ one or more claims of the 786 patent and is being accused of doing so both directly and indirectly.

36. Cisco, either alone and/or in conjunction with others, including its customers and/or suppliers, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale unified messaging systems/products/services that, upon receipt of an email, actuate a voice mail system to send an e-mail notification signal to a telephone node (including at least systems/products/services under following designation: Cisco Unity Connection) that infringed one or more claims of the 786 patent.

37. To the extent that Cisco acted in conjunction with others, including its customers and/or suppliers, in its infringement, these others are contractually or otherwise obliged to Cisco to carry out their acts.

38. Cisco's customers and/or suppliers directly made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale unified messaging systems/products/services that, upon receipt of an email, actuate a voice mail system to send an e-mail notification signal to a telephone node (including at least systems/products/services under

¹ MessageTech accuses Cisco of past, present, and future infringement. All allegations of infringement or acts leading to infringement are made in the past tense, rather than also in the present and future tense, strictly for simplicity's sake.

following designation: Cisco Unity Connection) that infringed one or more claims of the 786 patent.

39. Cisco induced infringement and/or contributed to the infringement of one or more of the claims of the 786 patent by its customers and/or suppliers.

40. Cisco took active steps, directly and/or through contractual relationships with others, to cause infringement with both knowledge of the 786 patent, the specific intent to cause its customers and/or suppliers (e.g., manufacturers of computer and telecommunications equipment, companies selling message management software) to make, use, sell, import, or otherwise provide the accused systems/products/services in a manner that infringed the 786 Patent, and knowledge that these acts by its customers and/or suppliers constituted infringement. Such steps by Cisco included, among other things, advising or directing its customers and/or suppliers to make, use, sell, or import the accused systems/products/services in an infringing manner; advertising and promoting the use of the accused systems/products/services in an infringing manner; and/or distributing instructions that guide users to use the accused systems/products/services in an infringing manner. Cisco, being involved in the relevant telecom hardware and software systems of its customers and/or suppliers, had sufficiently detailed knowledge of the related activities of its customers and/or suppliers to know that these acts constituted infringement yet took the above steps to cause infringement regardless.

41. The accused systems/products/services contain hardware and software components that are especially designed to be used in conjunction with other devices or systems that may not be provided by Cisco. These other devices or systems may include: email servers and clients; telephone hardware; and voice servers. To the extent Cisco did not provide these other devices and systems, it took active steps, directly and/or through contractual relationships,

to cause infringement by its customers and/or suppliers, including, among other things, advising or directing others to integrate such other devices and systems with accused systems/products/services; advertising and promoting the use by others of the accused systems/products/services with such other devices and systems; and distributing instructions that guide users to integrate the accused systems/products/services with such other devices and systems.

42. The accused systems/products/services have hardware and/or software components that are especially designed and/or adapted to be used with such other devices and systems in carrying out unified messaging functionality, as seen by how prominently the unified messaging feature is promoted by Cisco on its website and marketing literature. These components in the Accused Products constitute a material part of the invention of one or more asserted claims of the 786 patent and are not staple articles of commerce suitable for substantial non-infringing use. These distinct and separate components are used only to perform the unified messaging functionality and not any other functionality.

43. For the reasons stated above, Cisco infringed the 786 patent both directly and indirectly.

44. Cisco's infringement was willful at least from the date it had knowledge of the 786 patent, as Cisco knew or should have known of the risk of infringement from that point in time. Cisco acted in the face of "an objectively high likelihood that its actions constituted infringement of a valid patent" or with reckless disregard of that likelihood.

45. MessageTech has been, is being, and will continue to be damaged as a result of the infringing conduct by defendant alleged above. Thus, defendant is liable to MessageTech in an amount that adequately compensates MessageTech for such infringements, 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.

JURY DEMAND

MessageTech hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

MessageTech requests that the Court find in its favor and against the defendant and that the Court grant MessageTech the following relief:

a. Judgment that one or more claims of the 786 patent have been infringed, either literally and/or under the doctrine of equivalents, by defendant and/or by others to whose infringement defendant has contributed and/or by others whose infringement has been induced by defendant;

b. A permanent injunction enjoining defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing infringement of, or contributing to infringement of the 786 patent;

c. Judgment that defendant account for and pay to MessageTech all damages to and costs incurred by MessageTech because of defendant's infringing activities and other conduct complained of herein;

d. That MessageTech be granted pre-judgment and post-judgment interest on the damages caused by defendant's infringing activities and other conduct complained of herein;

e. That this Court declare this an exceptional case and award MessageTech its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

f. That MessageTech be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: January 28, 2014

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