

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

CISCO SYSTEMS, INC.,

Plaintiff,

v.

SPRINT COMMUNICATIONS COMPANY L.P.

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Cisco Systems, Inc. (“Cisco”), for its complaint against Defendant Sprint Communications Company L.P. (“Sprint”), hereby demands a jury trial and alleges as follows:

NATURE OF THE ACTION

1. Pursuant to the Declaratory Judgment Act, 28 U.S.C §§ 2201-02, and the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, this is an action for declaratory judgment of invalidity of six United States Patents and for such other relief as the Court deems just and proper. The six United States Patents are Nos. 6,298,064 (“the ‘064 patent”) (attached as Exhibit A), 6,452,932 (“the ‘932 patent”) (attached as Exhibit B), 6,463,052 (“the ‘052 patent”) (attached as Exhibit C), 6,473,429 (“the ‘429 patent”) (attached as Exhibit D), 6,633,561 (“the ‘3,561 patent”) (attached as Exhibit E), and 7,286,561 (“the ‘6,561 patent”) (attached as Exhibit F) (collectively, “the Sprint Patents-in-Suit”).

PARTIES

2. Plaintiff Cisco is a California corporation with its principal place of business located at 170 West Tasman Drive, San Jose, California 95134.

3. Defendant Sprint is a Delaware limited partnership with its principal place of business located at 6200 Sprint Parkway, Overland Park, Kansas 66251.

JURISDICTION AND VENUE

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

5. This Court has subject matter jurisdiction over these claims under 28 U.S.C. §§ 1331, 1338(a), 2201, 2202, and the patent laws of the United States 35 U.S.C. § 1 *et seq.*

6. This Court has personal jurisdiction over Sprint by virtue of its sufficient minimum contacts with this forum at least because Sprint is organized and exists under the laws of Delaware and because Sprint does business in Delaware.

7. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b) at least because Sprint does business in this District and is subject to personal jurisdiction in this District.

EXISTENCE OF AN ACTUAL CONTROVERSY

8. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

9. Cisco is a worldwide leader in networking. Cisco is a leading provider of switches and other networking products that can be used, among other things, in telephony networks.

10. Cisco has numerous customers in the communications industries, including without limitation Cox Communications Inc. and related entities (“Cox”).

11. Cisco has agreements with customers in the communications industries, including without limitation Cox, that specify conditions under which Cisco must indemnify them against claims of patent infringement for the use of Cisco products.

12. Sprint has pursued a licensing and litigation strategy that has included asserting the Sprint Patents-in-Suit against Cisco's customers, including without limitation Cox, with respect to their broadband and/or packet-based telephony products and services.

13. Upon information and belief, Cox uses certain Cisco equipment, such as Cisco's BTS 10200 soft switch, in connection with Cox's broadband and/or packet-based telephony network.

14. Cox has informed Cisco that Sprint's assertions of the Sprint Patents-in-Suit relate to equipment that Cox purchased from Cisco and has demanded that Cisco, as the manufacturer of such equipment, defend and indemnify Cox against Sprint's infringement claims.

15. On April 16, 2012, Cox brought suit against Sprint in this District alleging, among other things, that the asserted claims of the Sprint Patents-in-Suit are invalid and that a judicial declaration of invalidity should issue. (*Cox Communications, Inc., et al. v. Sprint Communications Company L.P., et al.*, C.A. No: 12-487-SLR (D. Del.) at D.I. 1). Sprint subsequently brought counterclaims against Cox alleging, among other things, infringement of the Sprint Patents-in-Suit by Cox's broadband and/or packet-based telephony network. (*Id.* at D.I. 97.)

16. On February 27, 2015, Cox filed a motion for partial summary judgment in this District that the claims of the Sprint Patents-in-Suit were invalid because the limitation "processing system" contained therein was indefinite. (D.I. 207-08.)

17. On May 15, 2015, the Court in this District granted Cox's motion for summary judgment of invalidity, ruling that the limitation "processing system" contained in the claims was indefinite. (D.I. 231.) The Court's Order is attached as Exhibit G.

18. In addition to the assertions against Cox leading to the aforementioned action between Cox and Sprint, Sprint also has asserted the Sprint Patents-in-Suit against other Cisco customers, such as Comcast Cable Communications, LLC (and related entities) and Time Warner Cable Inc. (and related entities). (*Sprint Communications Company L.P. v. Comcast Cable Communications, LLC, et al.*, Case No. 11-cv-2684 (KHV/DJW) (D. Kan.)) and *Sprint Communications Company L.P. v. Time Warner Cable Inc., et al.*, Case No. 11-cv-2686 (KHV/DJW) (D. Kan.)). These Cisco customers have informed Cisco that Sprint's assertions relate to equipment that these customers purchased from Cisco and have demanded that Cisco, as the manufacturer of such equipment, defend and indemnify them against Sprint's infringement claims.

19. Sprint's allegations of infringement, threats of litigation, and lawsuits have cast a cloud of uncertainty over Cisco's products requiring the declaratory relief sought in this complaint.

20. These activities by Sprint create an immediate, definite, concrete, and substantial dispute regarding the alleged validity of Sprint's Patents-in-Suit.

COUNT ONE

Declaratory Judgment Of Invalidity of the '064 Patent

21. Cisco incorporates by reference the allegations set forth in paragraphs 1 through 20 as though fully set forth herein.

22. Sprint claims to own all rights, title, and interest in the '064 patent.

23. Sprint has accused Cisco's customers of infringing the '064 patent based, upon information and belief, at least in part on their use of Cisco products such as, for example, the BTS 10200 soft switch.

24. Claims of the '064 patent are invalid for failure to meet the conditions of patentability of 35 U.S.C. §§ 1 *et seq.*, including but not limited to the provisions of 35 U.S.C. §§ 101, 102, 103, and 112, and/or based on other judicially-created bases for invalidation. By way of example and not limitation, in a case brought by Cox against Sprint concerning the Sprint Patents-in-Suit, the District Court of Delaware held that claims of the '064 patent were invalid for indefiniteness. (*Cox Communications, Inc., et al. v. Sprint Communications Company L.P., et al.*, C.A. No: 12-487-SLR (D. Del.) at D.I. 231.) For the same reasons, and once judgment is entered, under the doctrine of collateral estoppel, those claims of the '064 patent are likewise invalid here.

25. Absent a declaration that the claims of the '064 patent are invalid, Sprint will continue to wrongfully assert the '064 patent against Cisco products and customers, thereby causing Cisco irreparable harm and injury.

26. An actual, substantial, and justiciable controversy of sufficient immediacy and reality exists between Cisco and Sprint as to whether the claims of the '064 patent are invalid. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding the '064 patent.

27. Based on the foregoing, Cisco hereby requests a declaration from the Court that the claims of the '064 patent are invalid.

COUNT TWO

Declaratory Judgment Of Invalidity of the '932 Patent

28. Cisco incorporates by reference the allegations set forth in paragraphs 1 through 27 as though fully set forth herein.

29. Sprint claims to own all rights, title, and interest in the '932 patent.

30. Sprint has accused Cisco's customers of infringing the '932 patent based, upon information and belief, at least in part on their use of Cisco products such as, for example, the BTS 10200 soft switch.

31. Claims of the '932 patent are invalid for failure to meet the conditions of patentability of 35 U.S.C. §§ 1 *et seq.*, including but not limited to the provisions of 35 U.S.C. §§ 101, 102, 103, and 112, and/or based on other judicially-created bases for invalidation. By way of example and not limitation, in a case brought by Cox against Sprint concerning the Sprint Patents-in-Suit, the District of Delaware held that claims of the '932 patent were invalid for indefiniteness. (*Cox Communications, Inc., et al. v. Sprint Communications Company L.P., et al.*, C.A. No: 12-487-SLR (D. Del.) at D.I. 231.) For the same reasons, and once judgment is entered, under the doctrine of collateral estoppel, those claims of the '932 patent are likewise invalid here.

32. Absent a declaration that the claims of the '932 patent are invalid, Sprint will continue to wrongfully assert the '932 patent against Cisco products and customers, thereby causing Cisco irreparable harm and injury.

33. An actual, substantial, and justiciable controversy of sufficient immediacy and reality exists between Cisco and Sprint as to whether the claims of the '932 patent are invalid. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding the '932 patent.

34. Based on the foregoing, Cisco hereby requests a declaration from the Court that the claims of the '932 patent are invalid.

COUNT THREE

Declaratory Judgment Of Invalidity of the '052 Patent

35. Cisco incorporates by reference the allegations set forth in paragraphs 1 through 34 as though fully set forth herein.

36. Sprint claims to own all rights, title, and interest in the '052 patent.

37. Sprint has accused Cisco's customers of infringing the '052 patent based, upon information and belief, at least in part on their use of Cisco products such as, for example, the BTS 10200 soft switch.

38. Claims of the '052 patent are invalid for failure to meet the conditions of patentability of 35 U.S.C. §§ 1 *et seq.*, including but not limited to the provisions of 35 U.S.C. §§ 101, 102, 103, and 112, and/or based on other judicially-created bases for invalidation. By way of example and not limitation, in a case brought by Cox against Sprint concerning the Sprint Patents-in-Suit, the District of Delaware held that claims of the '052 patent were invalid for indefiniteness. (*Cox Communications, Inc., et al. v. Sprint Communications Company L.P., et al.*, C.A. No: 12-487-SLR (D. Del.) at D.I. 231.) For the same reasons, and once judgment is entered, under the doctrine of collateral estoppel, those claims of the '052 patent are likewise invalid here.

39. Absent a declaration that the claims of the '052 patent are invalid, Sprint will continue to wrongfully assert the '052 patent against Cisco products and customers, thereby causing Cisco irreparable harm and injury.

40. An actual, substantial, and justiciable controversy of sufficient immediacy and reality exists between Cisco and Sprint as to whether the claims of the '052 patent are invalid. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding the '052 patent.

41. Based on the foregoing, Cisco hereby requests a declaration from the Court that the claims of the '052 patent are invalid.

COUNT FOUR

Declaratory Judgment Of Invalidity of the '429 Patent

42. Cisco incorporates by reference the allegations set forth in paragraphs 1 through 41 as though fully set forth herein.

43. Sprint claims to own all rights, title, and interest in the '429 patent.

44. Sprint has accused Cisco's customers of infringing the '429 patent based, upon information and belief, at least in part on their use of Cisco products such as, for example, the BTS 10200 soft switch.

45. Claims of the '429 patent are invalid for failure to meet the conditions of patentability of 35 U.S.C. §§ 1 *et seq.*, including but not limited to the provisions of 35 U.S.C. §§ 101, 102, 103, and 112, and/or based on other judicially-created bases for invalidation. By way of example and not limitation, in a case brought by Cox against Sprint concerning the Sprint Patents-in-Suit, the District of Delaware held that claims of the '429 patent were invalid for indefiniteness. (*Cox Communications, Inc., et al. v. Sprint Communications Company L.P., et al.*, C.A. No: 12-487-SLR (D. Del.) at D.I. 231.) For the same reasons, and once judgment is entered, under the doctrine of collateral estoppel, those claims of the '429 patent are likewise invalid here.

46. Absent a declaration that the claims of the '429 patent are invalid, Sprint will continue to wrongfully assert the '429 patent against Cisco products and customers, thereby causing Cisco irreparable harm and injury.

47. An actual, substantial, and justiciable controversy of sufficient immediacy and reality exists between Cisco and Sprint as to whether the claims of the '429 patent are invalid. A

judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding the '429 patent.

48. Based on the foregoing, Cisco hereby requests a declaration from the Court that the claims of the '429 patent are invalid.

COUNT FIVE

Declaratory Judgment Of Invalidity of the '3,561 Patent

49. Cisco incorporates by reference the allegations set forth in paragraphs 1 through 48 as though fully set forth herein.

50. Sprint claims to own all rights, title, and interest in the '3,561 patent.

51. Sprint has accused Cisco's customers of infringing the '3,561 patent based, upon information and belief, at least in part on their use of Cisco products such as, for example, the BTS 10200 soft switch.

52. Claims of the '3,561 patent are invalid for failure to meet the conditions of patentability of 35 U.S.C. §§ 1 *et seq.*, including but not limited to the provisions of 35 U.S.C. §§ 101, 102, 103, and 112, and/or based on other judicially-created bases for invalidation. By way of example and not limitation, in a case brought by Cox against Sprint concerning the Sprint Patents-in-Suit, the District of Delaware held that claims of the '3,561 patent were invalid for indefiniteness. (*Cox Communications, Inc., et al. v. Sprint Communications Company L.P., et al.*, C.A. No: 12-487-SLR (D. Del.) at D.I. 231.) For the same reasons, and once judgment is entered, under the doctrine of collateral estoppel, those claims of the '3,561 patent are likewise invalid here.

53. Absent a declaration that the claims of the '3,561 patent are invalid, Sprint will continue to wrongfully assert the '3,561 patent against Cisco products and customers, thereby causing Cisco irreparable harm and injury.

54. An actual, substantial, and justiciable controversy of sufficient immediacy and reality exists between Cisco and Sprint as to whether the claims of the '3,561 patent are invalid. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding the '3,561 patent.

55. Based on the foregoing, Cisco hereby requests a declaration from the Court that the claims of the '3,561 patent are invalid.

COUNT SIX

Declaratory Judgment Of Invalidity of the '6,561 Patent

56. Cisco incorporates by reference the allegations set forth in paragraphs 1 through 55 as though fully set forth herein.

57. Sprint claims to own all rights, title, and interest in the '6,561 patent.

58. Sprint has accused Cisco's customers of infringing the '6,561 patent based, upon information and belief, at least in part on their use of Cisco products such as, for example, the BTS 10200 soft switch.

59. Claims of the '6,561 patent are invalid for failure to meet the conditions of patentability of 35 U.S.C. §§ 1 *et seq.*, including but not limited to the provisions of 35 U.S.C. §§ 101, 102, 103, and 112, and/or based on other judicially-created bases for invalidation. By way of example and not limitation, in a case brought by Cox against Sprint concerning the Sprint Patents-in-Suit, the District of Delaware held that claims of the '6,561 patent were invalid for indefiniteness. (*Cox Communications, Inc., et al. v. Sprint Communications Company L.P., et al.*, C.A. No: 12-487-SLR (D. Del.) at D.I. 231.) For the same reasons, and once judgment is entered, under the doctrine of collateral estoppel, those claims of the '6,561 patent are likewise invalid here.

60. Absent a declaration that the claims of the '6,561 patent are invalid, Sprint will continue to wrongfully assert the '6,561 patent against Cisco products and customers, thereby causing Cisco irreparable harm and injury.

61. An actual, substantial, and justiciable controversy of sufficient immediacy and reality exists between Cisco and Sprint as to whether the claims of the '6,561 patent are invalid. A judicial declaration is necessary and appropriate so that Cisco may ascertain its rights regarding the '6,561 patent.

62. Based on the foregoing, Cisco hereby requests a declaration from the Court that the claims of the '6,561 patent are invalid.

PRAYERS FOR RELIEF

WHEREFORE, Cisco respectfully requests that judgment be entered in its favor and prays that the Court grant the following relief:

- A. A declaration that each claim of the Sprint Patents-in-Suit is invalid;
- B. An order that Sprint and each of its officers, directors, employees, agents, attorneys, and all persons in active concert or participation with them, are restrained and enjoined from further instituting or further prosecuting any action against Cisco or the purchasers of Cisco's products with respect to the Sprint Patents-in-Suit;
- C. A declaration that judgment be entered in favor of Cisco and against Sprint on each of Cisco's claims;
- D. A declaration that this case is exceptional case under 35 U.S.C. § 285;
- E. An award to Cisco of its costs and attorneys' fees; and
- F. Such other relief as this Court or a jury may deem just and proper.

JURY DEMAND

In accordance with Federal Rule of Civil Procedure 38 and Local Rule 38.1, Cisco respectfully demands a jury trial of all issues triable to a jury in this action.

OF COUNSEL:

John M. Desmarais
Jordan Malz
Tom BenGera
DESMARAIS LLP
230 Park Avenue
New York, NY 10169
(212) 351-3400

/s/ Kelly E. Farnan

Kelly E. Farnan (#4395)
Katharine C. Lester (#5629)
Richards, Layton & Finger PA
One Rodney Square
920 N. King Street
Wilmington, DE 19801
(302) 651-7700
farnan@rlf.com
lester@rlf.com

Counsel for Plaintiff Cisco Systems, Inc.

Dated: May 28, 2015