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Clerk, U.S. District Court
Northern District of California
San Jose

ADR

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

CISCO SYSTEMS, INC.,
Plaintiff,

v.

ALBERTA TELECOMMUNICATIONS
RESEARCH CENTRE d/b/a TR LABS
and TR TECHNOLOGIES, INC.,
Defendants.

CV 12-03293

NC

C.A. No. _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

18 Plaintiff Cisco Systems, Inc. ("Cisco") by and through its attorneys brings this action for
19 a declaratory judgment and alleges as follows:

NATURE OF THE ACTION

21 Cisco is a worldwide leader in the development of the networking equipment that
22 underlies today's modern telecommunications infrastructure. Cisco's customers include leading
23 telecommunications providers who have used Cisco's products to build a high speed, reliable
24 network infrastructure for the delivery of voice and data content such as AT&T, Qwest (now
25 CenturyLink), Windstream, Comcast, Sprint, Cox, tw telecom, and Level 3. Defendants Alberta
26 Telecommunications Research Centre d/b/a TR Labs ("TR Labs") and TR Technologies, Inc.

1 (“TR Tech”) (collectively, “Defendants”) have accused Cisco’s customers of infringing at least
2 seven of its patents through use of Cisco’s products in their telecommunications networks. To
3 date, TR Labs has sued at least six of Cisco’s customers in actions currently pending in the
4 District of New Jersey (C.A. No. 09-cv-3883) and the District of Colorado (C.A. No. 12-cv-581).
5 In addition, Defendants have sent letters to other customers relating to their use of Cisco’s
6 products in their networks and threatening to file suit on the same patents. Defendants’
7 allegations of infringement arising from the use of Cisco’s products are unwarranted, and Cisco
8 brings this declaratory judgment action to free its customers, its product lines, and itself from
9 these unwarranted allegations of patent infringement.

10 **PARTIES**

11 1. Plaintiff Cisco is a corporation organized and existing under the laws of the State
12 of California with its principal place of business at 170 West Tasman Drive, San Jose, California
13 95134.

14 2. Upon information and belief, Defendant TR Labs is a research consortium
15 organized and existing under the laws of Canada, with its principal place of business at 9107
16 116th Street, Edmonton, Alberta, Canada.

17 3. Upon information and belief, Defendant TR Tech is a corporation organized and
18 existing under the laws of Canada with its principal place of business at 9107 116th Street,
19 Edmonton, Alberta, Canada.

20 **FACTUAL BACKGROUND**

21 **Cisco’s Products**

22 4. Cisco is a worldwide leader in the development of networking products. Cisco
23 provides its networking products to telecommunications customers who deploy them in their
24 own networks.

25 5. Cisco’s product line includes its ONS 15454 multiservice platforms and CRS-1
26 routers.

1 **Defendants' Patents**

2 6. U.S. Patent No. 4,956,835 (“the ’835 patent”) is entitled “Method and apparatus
3 for self-restoring and self-provisioning communication networks” and issued on September 11,
4 1990. A copy of the ’835 patent is attached as Exhibit A.

5 7. U.S. Patent No. 5,850,505 (“the ’505 patent”) is entitled “Method for
6 preconfiguring a network to withstand anticipated failures” and issued on December 15, 1998. A
7 copy of the ’505 patent is attached as Exhibit B.

8 8. U.S. Patent No. 6,377,543 (“the ’543 patent”) is entitled “Path restoration of
9 networks” and issued on April 23, 2002. A copy of the ’543 patent is attached as Exhibit C.

10 9. U.S. Patent No. 6,404,734 (“the ’734 patent”) is entitled “Scalable network
11 restoration device” and issued on June 11, 2002. A copy of the ’734 patent is attached as Exhibit
12 D.

13 10. U.S. Patent No. 6,421,349 (“the ’349 patent”) is entitled “Distributed
14 preconfiguration of spare capacity in closed paths for network restoration” and issued on July 16,
15 2002. A copy of the ’349 patent is attached as Exhibit E.

16 11. U.S. Patent No. 6,914,880 (“the ’880 patent”) is entitled “Protection of routers in
17 a telecommunications network” and issued on July 5, 2005. A copy of the ’880 patent is
18 attached as Exhibit F.

19 12. U.S. Patent No. 7,260,059 (“the ’059 patent”) is entitled “Evolution of a
20 telecommunications network from ring to mesh structure” and issued on August 21, 2007. A
21 copy of the ’059 patent is attached as Exhibit G.

22 13. TR Labs purports to be the owner by assignment of the ’835, ’505, ’543, ’734
23 ’349, ’880, and ’059 patents.

24 14. TR Tech purports to be the exclusive licensee of the ’835, ’505, ’543, ’734 ’349,
25 ’880, and ’059 patents.

1 15. Upon information and belief, TR Labs does not commercialize any products or
2 services embodying the '835, '505, '543, '734 '349, '880, and '059 patents.

3 16. Upon information and belief, TR Tech does not commercialize any products or
4 services embodying the '835, '505, '543, '734 '349, '880, and '059 patents.

5 **Actual and Threatened Litigation Involving Defendants' Patents**

6 AT&T Litigation

7 17. On August 5, 2009, TR Labs sued AT&T Corp. ("AT&T") in the District of New
8 Jersey (C.A. No. 09-cv-3883), alleging infringement of the '880, '349, and '059 patents.

9 18. On January 26, 2010, TR Labs amended its complaint against AT&T to allege
10 infringement of the '880, '349, '059, and '734 patents.

11 19. On November 18, 2010, TR Labs again amended its complaint against AT&T to
12 allege infringement of the '880, '059, '734, '835, and '505 patents.

13 20. TR Labs has served infringement contentions in the AT&T litigation that identify
14 the use of Cisco's ONS 15454 multiservice platforms in AT&T's network as infringing TR
15 Labs's patents.

16 21. AT&T has denied infringement of TR Labs's patents by its use of Cisco's
17 products and has filed counterclaims seeking a declaratory judgment that TR Labs's patents are
18 not infringed, invalid, and unenforceable.

19 Colorado Litigation

20 22. On March 6, 2012, TR Labs sued CenturyLink, Inc. ("CenturyLink") in the
21 District of Colorado (C.A. No. 12-cv-581) alleging infringement of the '835, '505, '543, '734
22 '349, '880, and '059 patents (the "Colorado case").

23 23. On April 20, 2012, TR Labs amended its complaint in the Colorado case to allege
24 infringement of the '835, '505, '543, '734 '349, '880, and '059 patents by Qwest
25 Communications Company, LLC, Qwest Corp. (together with Qwest Communications
26
27
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1 Company, LLC, “Qwest”), Windstream Corp. (“Windstream”), Sprint Nextel Corp. (“Sprint”),
2 Comcast Corp. (“Comcast”), and Cox Communications, Inc. (“Cox”).

3 24. On June 20, 2012, Defendants filed a motion for leave to file a second amended
4 complaint in the Colorado case. Defendants’ proposed second amended complaint adds TR Tech
5 as a plaintiff and alleges infringement of the patents-in-suit by two additional defendants, tw
6 telecom, inc. (“tw telecom”) and Level 3 Communications, Inc. (“Level 3”).

7 25. Defendants’ proposed second amended complaint in the Colorado case alleges
8 that Qwest, Windstream, Sprint, Comcast, Cox, tw telecom, and Level 3 “have deployed at least
9 Cisco ONS 15454 Multiservice platforms . . . and/or Cisco CRS-1 routers” in their
10 telecommunications networks to “utilize the functionality of the aforementioned devices” in a
11 manner that infringes the ’835, ’505, ’543, ’734 ’349, ’880, and/or ’059 patents. Cisco denies
12 that its products—or their use in Cisco’s customers networks—infringes the ’835, ’505, ’543,
13 ’734 ’349, ’880, and/or ’059 patents.

14 Threatened Litigation

15 26. TR Labs sent letters in March 2012 to several of Cisco’s other customers alleging
16 that their telecommunications networks infringe TR Labs’s patents, including US Signal
17 Company LLC.

18 27. Upon information and belief, TR Labs has provided claim charts to some of
19 Cisco’s customers alleging that the use of Cisco’s products in its customers’ telecommunications
20 infringes the ’835, ’505, ’543, ’734 ’349, ’880, and/or ’059 patents. Cisco denies that its
21 products—or their use in Cisco’s customers’ networks—infringes the ’835, ’505, ’543, ’734,
22 ’349, ’880, and/or ’059 patents.

23 **JURISDICTION AND VENUE**

24 **Subject Matter Jurisdiction**

25 28. This Court has subject matter jurisdiction over Cisco’s request for a declaratory
26 judgment under 28 U.S.C. §§ 2201 and 2202. This action arises under the patent laws of the
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1 United States, 35 U.S.C. §§ 100 *et seq.*, which are within the subject matter jurisdiction of this
2 Court under 28 U.S.C. §§ 1331 and 1338(a).

3 29. Defendants' actual and threatened litigation alleging infringement of the '835,
4 '505, '543, '734 '349, '880, and '059 patents by the use of Cisco's products in its customers'
5 telecommunications networks has created an actual and justiciable controversy as to the
6 noninfringement and invalidity of those patents.

7 30. Defendants' infringement allegations threaten actual and imminent injury to Cisco
8 that can be redressed by judicial relief and that injury is of sufficient immediacy and reality to
9 warrant the issuance of a declaratory judgment. Absent a declaration of noninfringement and/or
10 invalidity, Defendants' continued wrongful assertions of infringement through the use of Cisco's
11 products will cause Cisco irreparable harm.

12 **Personal Jurisdiction**

13 31. Defendants are subject to general and specific personal jurisdiction in this judicial
14 district based upon their purposeful, systematic, and continuous contacts with California.

15 32. For example, Defendants have purposefully availed themselves of benefits and
16 protection offered by courts located in the State of California. TR Labs has brought suit for
17 patent infringement in this district no fewer than five times during the past five years: *Alberta*
18 *Telecommunications Research Centre v. Texas Instruments, Inc.*, C.A. No. 09-cv-4548 (N.D.
19 Cal.) (filed Sept. 25, 2009); *Alberta Telecommunications Research Centre v. Dell Inc.*, C.A. No.
20 09-cv-3400 (N.D. Cal.) (filed July 24, 2009); *Alberta Telecommunications Research Centre v.*
21 *Axiom Memory Solutions, et al.*, C.A. No. 09-cv-729 (N.D. Cal.) (filed Feb. 18, 2009); *Alberta*
22 *Telecommunications Research Centre v. Sony Corp., et al.*, C.A. No. 08-cv-3408 (N.D. Cal.)
23 (filed July 15, 2008); *Alberta Telecommunications Research Centre v. Samsung Electronics Co.,*
24 *et al.*, C.A. No. 07-cv-2416 (N.D. Cal.) (filed May 4, 2007).

25 33. Upon information and belief, Defendants maintain a website at
26 <http://www.trlabs.ca/trlabs/>, which is accessible to residents of the State of California and in this
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1 district. Defendants solicit membership in their organization and offer to license their patents on
2 their website.

3 34. Upon information and belief, Defendants maintain significant relationships with
4 companies based in California. For example, an article dated March 1, 2012 posted on
5 Defendants' website touts as a "success story" their "very broad and supportive relationship"
6 with Starscriber Corporation, a company based in California. *See*
7 <http://www.trlabs.ca/trlabs/about/successstories/paststories/03012012.html>.

8 35. Upon information and belief, Defendants have licensed or have offered to license
9 their patents to other companies based in California or doing business in California, including
10 several of the companies that they sued for patent infringement in this district. *See*
11 <http://www.trlabs.ca/trlabs/about/mediaroom/news/08062009.html>.

12 **Venue**

13 36. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of
14 the events giving rise to the claims at issue occurred in this judicial district and because
15 Defendants are subject to personal jurisdiction within this judicial district.

16 **COUNT I (NON-INFRINGEMENT OF THE '835 PATENT)**

17 37. Cisco restates the allegations set forth in paragraphs 1 to 36 and incorporates them
18 by reference as though set forth fully herein.

19 38. No claim of the '835 patent has been or is infringed, either directly or indirectly,
20 by Cisco or its customers through their use of Cisco's products in their telecommunications
21 networks.

22 39. As a result of the acts described in the foregoing paragraphs, there exists a
23 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
24 declaratory judgment.

1 48. As a result of the acts described in the foregoing paragraphs, there exists a
2 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
3 declaratory judgment.

4 **COUNT V (NON-INFRINGEMENT OF THE '543 PATENT)**

5 49. Cisco restates the allegations set forth in paragraphs 1 to 48 and incorporates them
6 by reference as though set forth fully herein.

7 50. No claim of the '543 patent has been or is infringed, either directly or indirectly,
8 by Cisco or its customers through their use of Cisco's products in their telecommunications
9 networks.

10 51. As a result of the acts described in the foregoing paragraphs, there exists a
11 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
12 declaratory judgment.

13 **COUNT VI (INVALIDITY OF THE '543 PATENT)**

14 52. Cisco restates the allegations set forth in paragraphs 1 to 51 and incorporates them
15 by reference as though set forth fully herein.

16 53. The claims of the '543 patent are invalid for failure to comply with the
17 requirements of the patent laws of the United States, including but not limited to the provisions
18 of 35 U.S.C. §§ 101, 102, 103, and/or 112.

19 54. As a result of the acts described in the foregoing paragraphs, there exists a
20 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
21 declaratory judgment.

22 **COUNT VII (NON-INFRINGEMENT OF THE '734 PATENT)**

23 55. Cisco restates the allegations set forth in paragraphs 1 to 54 and incorporates them
24 by reference as though set forth fully herein.

1 56. No claim of the '734 patent has been or is infringed, either directly or indirectly,
2 by Cisco or its customers through their use of Cisco's products in their telecommunications
3 networks.

4 57. As a result of the acts described in the foregoing paragraphs, there exists a
5 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
6 declaratory judgment.

7 **COUNT VIII (INVALIDITY OF THE '734 PATENT)**

8 58. Cisco restates the allegations set forth in paragraphs 1 to 57 and incorporates them
9 by reference as though set forth fully herein.

10 59. The claims of the '734 patent are invalid for failure to comply with the
11 requirements of the patent laws of the United States, including but not limited to the provisions
12 of 35 U.S.C. §§ 101, 102, 103, and/or 112.

13 60. As a result of the acts described in the foregoing paragraphs, there exists a
14 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
15 declaratory judgment.

16 **COUNT IX (NON-INFRINGEMENT OF THE '349 PATENT)**

17 61. Cisco restates the allegations set forth in paragraphs 1 to 60 and incorporates them
18 by reference as though set forth fully herein.

19 62. No claim of the '349 patent has been or is infringed, either directly or indirectly,
20 by Cisco or its customers through their use of Cisco's products in their telecommunications
21 networks.

22 63. As a result of the acts described in the foregoing paragraphs, there exists a
23 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
24 declaratory judgment.

1 72. As a result of the acts described in the foregoing paragraphs, there exists a
2 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
3 declaratory judgment.

4 **COUNT XIII (NON-INFRINGEMENT OF THE '059 PATENT)**

5 73. Cisco restates the allegations set forth in paragraphs 1 to 72 and incorporates them
6 by reference as though set forth fully herein.

7 74. No claim of the '059 patent has been or is infringed, either directly or indirectly,
8 by Cisco or its customers through their use of Cisco's products in their telecommunications
9 networks.

10 75. As a result of the acts described in the foregoing paragraphs, there exists a
11 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
12 declaratory judgment.

13 **COUNT XIV (INVALIDITY OF THE '059 PATENT)**

14 76. Cisco restates the allegations set forth in paragraphs 1 to 75 and incorporates them
15 by reference as though set forth fully herein.

16 77. The claims of the '059 patent are invalid for failure to comply with the
17 requirements of the patent laws of the United States, including but not limited to the provisions
18 of 35 U.S.C. §§ 101, 102, 103, and/or 112.

19 78. As a result of the acts described in the foregoing paragraphs, there exists a
20 substantial controversy of sufficient immediacy and reality to warrant the issuance of a
21 declaratory judgment.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiffs pray that this Court grant the following relief:

24 1. A declaration that Cisco and its customers have not infringed and are not
25 infringing, either directly or indirectly, any claim of the '835, '505, '543, '734, '349, '880, and
26 '059 patents;

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs demand a jury trial for all issues so triable.

3 Respectfully submitted,

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5 DORR LLP

6 

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15 June 26, 2012