

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

HyperX Networks, LLC,  
  
an Arizona Limited Liability Company,  
  
Plaintiff,  
  
v.  
  
Ciena Corp.,  
a Delaware Corporation,  
  
Defendant.

Case No.

Jury Trial Demanded

**COMPLAINT FOR PATENT INFRINGEMENT**

1. Plaintiff HyperX Networks, LLC (“Plaintiff” or “HyperX”), by and through its attorneys, complains of Ciena Corp. (“Defendant”), and alleges the following:

**PARTIES**

2. Plaintiff HyperX Networks, LLC is a limited liability company organized and existing under the laws of Arizona that maintains its principal place of business 6552 W. Ivanhoe Ct, Chandler, Arizona 85226.

3. Defendant Ciena Corp. (“Defendant” or “Ciena”) is a corporation organized and existing under the laws of Delaware that maintains an established place of business at 3601 SW 160<sup>th</sup> Avenue, Suite 120, Miramar, Florida 33027.

**JURISDICTION**

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

5. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant because it has engaged in systematic and continuous business activities in this District. As described below, Defendant has willfully committed acts of patent infringement giving rise to this action within this District.

#### **VENUE**

7. Venue is proper in this District under 28 U.S.C. § 1400(b) because Defendant has an established place of business in this District. In addition, Defendant has committed acts of patent infringement in this District, and Plaintiff has suffered harm in this District.

#### **PATENTS-IN-SUIT**

8. Plaintiff is the assignee of all right, title and interest in United States Patent No. 10,686,657, titled “Automatic Provisioning of Customer Premises Equipment” (hereinafter “the ‘657 Patent”); and United States Patent No. 11,522,756, titled “System and Method for Agnostic Zero Touch Provisioning of Customer Premises Equipment” (hereinafter “the ‘756 Patent”) (hereinafter collectively “the Patents-in-Suit”); including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Patents-in-Suit, including past and future damages. Accordingly, Plaintiff possesses the exclusive right and standing to prosecute the present action for infringement of the Patents-in-Suit by Defendant.

#### **THE ‘657 PATENT**

9. The application leading to the ‘657 Patent was filed on September 25, 2018, as a continuation of application No. 15 / 222,198, filed on July 28, 2016, and the ‘657 Patent issued as a patent on June 16, 2020. A true and correct copy of the ‘657 Patent is attached hereto as Exhibit A and incorporated herein by reference.

#### **THE ‘756 PATENT**

10. The '756 Patent was filed on October 18, 2021 as a continuation of U.S. Patent No. 11,153,155, which is a continuation-in-part of U.S. Patent No. 11,686,657, which is a continuation of Patent Application No. 15/222,198 filed on July 28,2016 and wherein the '756 Patent issued as a patent on December 6, 2022. A true and correct copy of the '756 Patent is attached hereto as Exhibit B and incorporated herein by reference.

**COUNT 1: INFRINGEMENT OF THE '657 PATENT**

11. Plaintiff incorporates the above paragraphs 1-9 herein by reference.

12. **Direct Infringement.** Defendant has been and continues to directly infringe one or more claims of the '657 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least the Defendant products, primarily the Blue Planet Manage, Control and Plan, identified in the charts incorporated into this Count below (among the "Exemplary Defendant Products") that infringe at least the exemplary claims of the '657 Patent also identified in the charts incorporated into this Count below (the "Exemplary '657 Patent Claims") literally or by the doctrine of equivalents. On information and belief, numerous devices that infringe the claims of the '657 Patent have been made, used, sold, imported, and offered for sale by Defendant and/or its customers.

13. Defendant also has and continues to directly infringe, literally or under the doctrine of equivalents, the Exemplary '657 Patent Claims, by having its employees internally test and use these Exemplary Products.

14. **Actual Knowledge of Infringement.** Prior to issuance of the '657 Patent, the inventor, Daniel Xavier Perez, on behalf of the prior patent owner, had discussions with Defendant regarding the '657 Patent. These discussions included, on June 16, 2020, informing

Defendant that the '657 Patent had been issued and then providing Defendant a copy of the '657 on June 19, 2020.

15. On November 3, 2021, the inventor, by and through a law firm, provided Defendant actual notice, again, regarding the '657 Patent via a letter emailed and mailed to the following individuals: David M. Rothenstein, General Counsel; Rick Hamilton, Senior VP Blue Planet Software; and Robert Kucler, VP of Intellectual Property. *See* Exhibit C (November 3, 2021 notice letter).

16. Defendant, via Raymond M. Gabriel, Senior Intellectual Property Counsel, responded on March 18, 2022, expressing, in general, that Defendant was not interested in licensing the '657 Patent "at this time." *See* Exhibit D (March 18, 2022 email response).

17. Despite such actual knowledge of the '657 Patent, Defendant continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '657 Patent. On information and belief, Defendant has also continued to sell the Exemplary Defendant Products and distribute product literature and website materials inducing end users and others to use its products in the customary and intended manner that infringes the '657 Patent. *See* Exhibit E (extensively referencing these materials to demonstrate how they direct end users to commit patent infringement).

18. **Induced Infringement.** At least since being presented with a copy of this Complaint and corresponding claim charts, Defendant has actively, knowingly, and intentionally continued to induce infringement of the '657 Patent, literally or by the doctrine of equivalents, by selling Exemplary Defendant Products to their customers for use in end-user products in a manner that infringes one or more claims of the '657 Patent.

19. Exhibit E includes charts comparing the Exemplary '657 Patent Claims to the Exemplary Defendant Products. As set forth in these charts, the Exemplary Defendant Products practice the technology claimed by the '657 Patent. Accordingly, the Exemplary Defendant Products incorporated in these charts satisfy all elements of the Exemplary '657 Patent Claims.

20. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit E.

21. Plaintiff is entitled to recover damages adequate to compensate for Defendant's infringement.

#### **COUNT 2: INFRINGEMENT OF THE '756 PATENT**

22. Plaintiff incorporates the above paragraphs 1-8 and 10 herein by reference.

23. **Direct Infringement.** Defendant has been and continues to directly infringe one or more claims of the '756 Patent in at least this District by making, using, offering to sell, selling and/or importing, without limitation, at least the Defendant products, primarily the Blue Planet Manage, Control and Plan, identified in the charts incorporated into this Count below (among the "Exemplary Defendant Products") that infringe at least the exemplary claims of the '756 Patent also identified in the charts incorporated into this Count below (the "Exemplary '756 Patent Claims") literally or by the doctrine of equivalents. On information and belief, numerous other devices that infringe the claims of the '756 Patent have been made, used, sold, imported, and offered for sale by Defendant and/or its customers.

24. Defendant also has and continues to directly infringe, literally or under the doctrine of equivalents, the Exemplary '756 Patent Claims, by having its employees internally test and use these Exemplary Products.

25. **Actual Knowledge of Infringement.** The presentation of this Complaint, in conjunction with the attached claim charts and references cited, constitutes actual knowledge of infringement as alleged here. An email and letter including the Complaint has also been provided to Defendant, on the day of filing this Complaint.

26. Despite such actual knowledge, Defendant continues to make, use, test, sell, offer for sale, market, and/or import into the United States, products that infringe the '756 Patent. On information and belief, Defendant has also continued to sell the Exemplary Defendant Products and distribute product literature and website materials inducing end users and others to use its products in the customary and intended manner that infringes the '756 Patent. *See* Exhibit F (extensively referencing these materials to demonstrate how they direct end users to commit patent infringement).

27. **Induced Infringement.** At least since being presented with a copy of this Complaint and corresponding claim charts, Defendant has actively, knowingly, and intentionally continued to induce infringement of the '756 Patent, literally or by the doctrine of equivalents, by selling Exemplary Defendant Products to their customers for use in end-user products in a manner that infringes one or more claims of the '756 Patent.

28. Exhibit F includes charts comparing the Exemplary '756 Patent Claims to the Exemplary Defendant Products. As set forth in these charts, the Exemplary Defendant Products practice the technology claimed by the '756 Patent. Accordingly, the Exemplary Defendant Products incorporated in these charts satisfy all elements of the Exemplary '756 Patent Claims.

29. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit F.

30. Plaintiff is entitled to recover damages adequate to compensate for Defendant's infringement.

**JURY DEMAND**

31. Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests the following relief:

- A. A judgment that the '657 Patent is valid and enforceable;
- B. A judgment that Defendant has infringed directly and indirectly one or more claims of the '657 Patent;
- C. A judgment that the '756 Patent is valid and enforceable;
- D. A judgment that Defendant has infringed directly and indirectly one or more claims of the '756 Patent;
- E. An accounting of all damages;
- F. A judgment that awards Plaintiff all appropriate damages under 35 U.S.C. § 284 for Defendant's continuing or future infringement, up until the date such judgment is entered with respect to the '657 and '756 Patents, including pre- or post-judgment interest, costs, and disbursements as justified under 35 U.S.C. § 284;
- G. And, if necessary, to adequately compensate Plaintiff for Defendant's infringement, a judgment finding :
  - i. that this case is exceptional within the meaning of 35 U.S.C. § 285 and that Plaintiff be awarded its reasonable attorneys' fees against Defendant that it incurs in prosecuting this action;

- ii. that Plaintiff be awarded costs, and expenses that it incurs in prosecuting this action; and
- iii. that Plaintiff be awarded such further relief at law or in equity as the Court deems just and proper.

Dated: December 16, 2022

Respectfully submitted,

/s/ Terry M. Sanks

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**HyperX Networks, LLC**