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3 **UNITED STATES DISTRICT COURT**  
4 **FOR THE WESTERN DISTRICT OF WASHINGTON**  
5 **AT SEATTLE**

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7 **NITETEK LICENSING LLC,**

8  
9 Plaintiff,

10 v.

11 **METER GROUP, INC.,**

12  
13 Defendant.

**CASE NO. 22-CV-1522**

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**JURY TRIAL DEMANDED**

14  
15 **COMPLAINT FOR PATENT INFRINGEMENT**

16 1. Nitetek Licensing LLC (“Nitetek” or “Plaintiff”), by and through  
17 counsel, hereby brings this action for patent infringement against METER Group,  
18 Inc. (“METER” or “Defendant”), alleging infringement of U.S. Patent No.  
19 6,661,783 (“Patent-in-Suit” or the ‘783 Patent) titled “CDMA Transmission  
20 Apparatus” attached hereto as Exhibit A.  
21

22 **NATURE OF THE ACTION**

23 2. This is an action for patent infringement arising under the United  
24 States Patent Act 35 U.S.C. §§ 1 et seq., including 35 U.S.C. § 271.  
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## PARTIES

1  
2 3. Plaintiff Nitetek Licensing LLC (“Nitetek”) is a Texas company and  
3 has a principal place of business at 6001 W Parmer Ln, Ste 370 - 1070, Austin, TX  
4 78727-3908.

5  
6 4. On information and belief, Defendant METER Group, Inc. is a  
7 corporation organized under the laws of the State of Utah, having a principal place  
8 of business at 2365 NE Hopkins Court, Pullman, WA 99163.

## JURISDICTION AND VENUE

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11 5. This is an action for patent infringement in violation of the Patent Act  
12 of the United States, 35 U.S.C. §§ 1 et seq.

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14 6. This Court has original and exclusive subject matter jurisdiction over  
15 the patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).

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17 7. This Court has personal jurisdiction over METER because it  
18 maintains its principal place of business in the state of Washington. On  
19 information and belief, METER has transacted and is continuing to transact  
20 business in this District that includes, but is not limited to, the use of products and  
21 systems that practice the subject matter claimed in the patents involved in this  
22 action.  
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1 8. Venue is proper in this district under 28 U.S.C. § 1400(b) because  
2 METER is registered with the Secretary of State in the State of Washington and  
3 thus resides in this district under the Supreme Court’s opinion in *TC Heartland*  
4 *LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017). Further, upon  
5 information and belief, METER has committed acts of infringement in this district  
6 and a regular and established place of business in this district.  
7

8 **PATENT IN SUIT**  
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10 9. Plaintiff incorporates the above paragraphs herein by reference.  
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12 10. On December 9, 2003, the ‘783 Patent was duly and legally issued by  
13 the United States Patent and Trademark Office. The ‘783 Patent is presumed valid  
14 and enforceable.  
15

16 11. Plaintiff is the assignee of all right, title and interest in the ‘783 Patent,  
17 including all rights to enforce and prosecute actions for infringement and to collect  
18 damages for all relevant times against infringers of the ‘783 Patent.  
19

20 12. The ‘783 Patent generally relates to asymmetric communication  
21 through CDMA mobile communication method. Specifically, the ‘783 Patent  
22 provides a method by which a CDMA communication apparatus in the CDMA  
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cellular system can avoid a shortage of spreading codes on the downlink while carrying out open-loop transmission power control on the uplink.

13. The inventions disclosed in the Patent-in-Suit were not well-understood, routine, or conventional. At the time the '783 Patent was filed, there existed various problems in accommodating downlink signals because of a shortage of spreading codes while trying to secure the quality of the uplink through transmission power control. See Ex. A, '783 Patent, 1:10-11. While there were other methods for improving asymmetric communications through a CDMA system, the '783 Patent invented a method for resolving the issues were left unaddressed in prior art. See Ex. A, '783 Patent, 1:10-11.

14. The claimed invention addressed the problems detailed supra by providing a method of asymmetric communications through the use of a CDMA communication apparatus comprising a frame assembly section for assembling frames with a known reference signal and transmission power bit and a transmission rate control section for setting a lower transmission rate of a transmission signal composed of the known reference signal and transmission power bit above than the transmission rate for symmetric communications. See Ex. A, '783 Patent, 1:10.

15. The claims of the Patent-in-Suit do not merely recite the performance of a familiar practice, and instead the claims recite one or more inventive concepts that are rooted in improving the asymmetric CDMA communications. The Patent-in-Suit addresses problems rooted in improving asymmetric communication by providing a method that avoids downlink failure and improves the quality and system capacity of the uplink, the solutions it teaches are not merely drawn to longstanding human activities. Thus, the Patent-in-Suit provides an invention that cannot be performed with pen and paper or in the human mind, nor are the solutions it teaches drawn from longstanding human activities.

### **ACCUSED PRODUCTS**

16. Defendant makes, uses, offers for sale, sells in the U.S., and/or imports into the U.S. products, systems, and/or services that infringe the Patent-in-Suit, including, but not limited to the METER EM60 (“the Accused Product”).

17. The Accused Product utilizes UMTS-FDD technology using WCDMA technology performing uplink and downlink on different frequencies over a CDMA system. A non-limiting exemplary claim chart comparing the Accused Product to Claim 4 of the ’783 Patent is attached hereto as Exhibit B and is incorporated herein as if fully rewritten.

**COUNT 1 – INFRINGEMENT OF THE '783 PATENT**

1           18. Plaintiff incorporates the above paragraphs herein by reference.  
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3           19. The '783 Patent is valid, enforceable, and was duly and legally issued  
4 by the United States Patent and Trademark Office (“USPTO”) on December 9,  
5 2003. The '783 Patent is presumed valid and enforceable. See 35 U.S.C. § 282.  
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7           20. Plaintiff is the owner by assignment of the '783 Patent and possesses  
8 all rights of recovery under the '783 Patent, including the exclusive right enforce  
9 the '783 Patent and pursue lawsuits against infringers.  
10

11           21. Without a license or permission from Plaintiff, Defendant has infringed  
12 and continues to directly and indirectly infringe on one or more claims of the '783  
13 Patent by importing, making, using, offering for sale, or selling products and  
14 devices that embody the patented inventions, including, without limitation, one or  
15 more of the patented '783 systems and methods, in violation of 35 U.S.C. § 271.  
16

17           **Direct Infringement – 35 U.S.C. § 271(a)**

18           22. Plaintiff incorporates the above paragraphs herein by reference, the  
19 same as if set forth herein.  
20

21           23. Without a license or permission from Plaintiff, Defendant has infringed  
22 and continues to directly infringe on one or more claims of the '783 Patent by  
23 importing, making, using, offering for sale, or selling products and devices that  
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embody the patented invention, including, without limitation, one or more of the patented '783 systems and methods, in violation of 35 U.S.C. § 271.

24. Defendant has been and continues to directly infringe by, among other things, practicing all of the steps of the '783 Patent, for example, through internal testing, quality assurance, research and development, and troubleshooting. See *Joy Techs., Inc. v. Flakt, Inc.*, 6 F.3d 770, 775 (Fed. Cir. 1993); see also 35 U.S.C. § 271(2006).

25. By way of example, Defendant has infringed and continues to infringe at least one or more claims of the '783 Patent, including at least Claim 4. Attached hereto as Exhibit B is an exemplary claim chart detailing representative infringement of Claim 4 of the '783 Patent.

#### **Plaintiff Suffered Damages**

26. Defendant's acts of infringement of the Patent-in-Suit have caused damage to Plaintiff, and Plaintiff is entitled to recover from Defendant the damages sustained as a result of Defendant's wrongful acts in an amount subject to proof at trial pursuant to 35 U.S.C. 271. The precise amount of damages will be determined through discovery in this litigation and proven at trial.

#### **JURY DEMAND**

27. 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**

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2 WHEREFORE, Plaintiff prays for relief as follows:

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4 A Judgment that Defendant has directly infringed one or more claims of  
5 the '783 Patent either literally and/or under the doctrine of equivalents;

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7 B. Judgment permanently enjoining Defendant, its officers, directors,  
8 agents, servants, affiliates, employees, subsidiaries, divisions, branches,  
9 parents, attorneys, representatives, and all others acting in concert or privity  
10 with any of them, from further acts of infringement of the '783 Patent;

11  
12 C. Judgment awarding Defendant general and/or specific damages,  
13 including a reasonable royalty and/or lost profits, in amounts to be fixed by  
14 the Court in accordance with proof, including enhanced and/or exemplary  
15 damages, as appropriate, as well as all of Defendant's profits or gains of any  
16 kind from its acts of patent infringement;

17  
18 D. Judgment awarding Plaintiff pre-judgment and post-judgment interest;  
19  
20 and

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23 E. Judgment awarding Plaintiff such other and further relief as the Court  
24 may deem just and proper.  
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(b) enter a judgment awarding Plaintiff all damages adequate to compensate him for Defendant’s infringement of, direct or contributory, or inducement to infringe, the including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

(c) enter a judgment awarding treble damages pursuant to 35 U.S.C. § 284 for Defendant’s willful infringement of the ’783 Patent;

(d) issue a preliminary injunction and thereafter a permanent injunction enjoining and restraining Defendant, its directors, officers, agents, servants, employees, and those acting in privity or in concert with them, and its subsidiaries, divisions, successors, and assigns, from further acts of infringement, contributory infringement, or inducement of infringement of the ’783 Patent;

(e) enter a judgment requiring Defendant to pay the costs of this action, including all disbursements, and attorneys’ fees as provided by 35 U.S.C. § 285, together with prejudgment interest; and

(f) award Plaintiff all other relief that the Court may deem just and proper.

DATED this 26<sup>th</sup> day of October, 2022.

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