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9
10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

12
13 SERCOMM USA INC.,

14 Plaintiff,

15 v.

16 CDN INNOVATIONS LLC,

17 Defendant.
18

CASE NO. _____

**COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-INFRINGEMENT
AND INVALIDITY**

DEMAND FOR JURY TRIAL

1 Plaintiff Sercomm USA Inc. (“Sercomm USA”) files this Complaint against Defendant CDN
2 Innovations LLC (“CDN”) seeking declaratory judgment of non-infringement and invalidity as to
3 U.S. Patent Nos. 7,293,291 (the “’291 patent”), attached as Exhibit A, and 7,565,699 (the “’699
4 patent”), attached as Exhibit B, (collectively, the “patents-in-suit”). Sercomm USA states as follows:

5 **NATURE OF ACTION**

6 1. This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et*
7 *seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking a declaratory
8 judgment of non-infringement and/or invalidity of the patents-in-suit and for such other relief as the
9 Court deems just and proper.

10 **THE PARTIES**

11 2. Sercomm USA is a California corporation with its principal place of business at
12 42808 Christy Street, Suite 231, Fremont, CA 94538.

13 3. On information and belief, CDN is a limited liability company organized under the
14 laws of the State of Georgia with its principal place of business at 44 Milton Avenue, Suite 254,
15 Alpharetta, GA 30009.

16 4. On information and belief, CDN is the assignee of the patents-in-suit and claims to be
17 the assignee and owner of the right, title, and interest in and to the patents-in-suit.

18 **JURISDICTION AND VENUE**

19 5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§
20 1331 and 1338(a) because this action involves claims arising under the patent laws of the United
21 States, 35 U.S.C. § 1 *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

22 6. An actual and justiciable controversy exists between CDN and Sercomm USA as to
23 the non-infringement and invalidity of the patents-in-suit. This is at least because CDN has initiated
24 a litigation against Sercomm Corporation (“Sercomm”)—a corporate entity affiliated with Sercomm
25 USA—in the Western District of Texas (Case No. 6:23-cv-00873), in which CDN has alleged that
26 certain Sercomm USA products infringed the patents-in-suit.

27 7. This Court has personal jurisdiction over CDN, because CDN has directed and
28 continues to direct acts to this District, including acts pertaining to the patents-in-suit. For example,

1 CDN has purposefully directed its enforcement activities related to the patents-in-suit into the
2 Northern District of California, at least by accusing Sercomm USA’s products of patent
3 infringement. On March 13, 2023, through its “licensing agent” IPinvestments Group, CDN reached
4 out to Sercomm “to open a dialogue for SerComm to obtain a license under the CDN Portfolio,”
5 which includes the two patents at issue here. CDN knew that Sercomm sold products through
6 intermediaries. And Sercomm identified publicly that its Sales Centers in the United States include
7 Sercomm USA. See <https://www.sercomm.com/contact>. CDN further filed a complaint for patent
8 infringement in the Western District of Texas on December 21, 2023, against Sercomm Corp., an
9 affiliate of Sercomm USA, accusing Sercomm USA’s various router and gateway products of
10 infringing the patents-in-suit.

11 8. For the foregoing reasons, this Court has personal jurisdiction over CDN, and the
12 venue is proper, because CDN has more than sufficient minimum contacts with California, including
13 those within this District, such that this declaratory judgment action meets the requirements of
14 California’s long-arm statute and the U.S. Constitution’s due process clause.

15 9. For these reasons and the reasons set forth below, a justiciable controversy exists
16 between the parties, which is of sufficient immediacy and reality to warrant declaratory relief in this
17 District.

18 **THE PATENTS-IN-SUIT**

19 10. U.S. Patent No. 7,293,291 is titled “System and Method for Detecting Computer Port
20 Inactivity” and was issued on November 6, 2007. The ’291 patent expired on November 7, 2023.
21 CDN has asserted the ’291 patent against other companies who manufacture and sell routers,
22 gateways, modems, and related integrated circuits (ICs), including Sercomm Corp., Linksys USA
23 Inc., Netgear Inc., Armstrong Utilities Inc., Cogeco Communications Inc., Humax USA Inc., D-Link
24 Corp., Mediacom Communications LLC, TP-Link Technologies Co. Ltd., Cox Communications
25 Inc., Cequel Communications LLC, TDS Broadband Service LLC, Cable One Inc., Grande
26 Communications Networks LLC, Broadcom Inc., and MediaTek Inc., in the Eastern District of
27 Texas, the Western District of Texas, the District of Delaware, the District of Maryland, the Middle
28

1 District of Georgia, or the Northern District of Georgia. CDN’s cases against Sercomm Corp.,
2 Linksys USA Inc., Netgear Inc., and Armstrong Utilities Inc. remain pending and unresolved.

3 11. U.S. Patent No. 7,565,699 is titled “System and Method for Detecting Computer Port
4 Inactivity” and was issued on July 21, 2009. The ’699 patent is a continuation patent of the ’291
5 patent and expired on November 7, 2023. CDN has asserted the ’699 patent against other companies
6 who manufacture and sell routers, gateways, modems, and related ICs, including Sercomm Corp.,
7 Linksys USA Inc., Netgear Inc., Armstrong Utilities Inc., Cogeco Communications Inc., Humax
8 USA Inc., D-Link Corp., Mediacom Communications Corp., TP-Link Technologies Co. Ltd., Cox
9 Communications Inc., Cequel Communications LLC, TDS Broadband Service LLC, Cable One Inc.,
10 Grande Communications Networks LLC, Broadcom Inc., and MediaTek Inc., in the Eastern District
11 of Texas, the Western District of Texas, the District of Delaware, the District of Maryland, the
12 Middle District of Georgia, or the Northern District of Georgia. CDN’s cases against Sercomm
13 Corp., Linksys USA Inc., Netgear Inc., and Armstrong Utilities Inc. remain pending and unresolved.

14 12. CDN has attempted to enforce the patents-in-suit by filing patent litigations against
15 numerous companies that make and sell routers, gateways, modems, and related ICs. CDN has also
16 filed patent litigations against Sercomm Corp. and Linksys USA Inc. after the patents-in-suit
17 expired.

18 **FIRST CLAIM FOR RELIEF**

19 **(Declaratory Judgment of License, Estoppel, and/or Exhaustion of the ’291 patent)**

20 13. Sercomm USA incorporates the allegations of each preceding paragraph by reference.

21 14. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists
22 between CDN and Sercomm USA concerning license, estoppel, and/or exhaustion of rights of the
23 ’291 patent, at least because of CDN’s prior letter and infringement claim against products marketed
24 by Sercomm USA and CDN’s suits asserting the ’291 patent against similarly situated entities.

25 15. CDN voluntarily dismissed with prejudice its infringement actions against Broadcom
26 and MediaTek in the Western District of Texas respectively on August 8, 2020, and September 24,
27 2020. On information and belief, CDN granted a license or covenant to Broadcom and MediaTek or
28 otherwise reached agreements to resolve CDN’s purported infringement claims.

1 16. CDN's claims of infringement of the '291 patent against Sercomm USA's products
2 are barred, exhausted, and/or estopped, because Sercomm USA marketed products that incorporate
3 Broadcom's and/or MediaTek's ICs and software that have been licensed, fall under CDN's
4 covenants with Broadcom and MediaTek, or are otherwise subject to estoppel.

5 **SECOND CLAIM FOR RELIEF**

6 **(Declaratory Judgment of Non-Infringement of the '291 patent)**

7 17. Sercomm USA incorporates the allegations of each preceding paragraph by reference.

8 18. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists
9 between CDN and Sercomm USA concerning non-infringement of the '291 patent, at least because
10 of CDN's prior letter and infringement claim against products marketed by Sercomm USA and
11 CDN's suits asserting the '291 patent against similarly situated entities.

12 19. Sercomm USA had not infringed any claims of the '291 patent directly or indirectly,
13 either literally or under the doctrine of equivalents.

14 20. Under 28 U.S.C. §§ 2201 and 2202, Sercomm USA is entitled to a declaratory
15 judgment that it had not infringed any valid and enforceable claims of the '291 patent.

16 **THIRD CLAIM FOR RELIEF**

17 **(Declaratory Judgment of Invalidity of the '291 patent)**

18 21. Sercomm USA incorporates the allegations of each preceding paragraph by reference.

19 22. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists
20 between CDN and Sercomm USA concerning invalidity of the '291 patent, at least because of
21 CDN's prior letter and infringement claim against products marketed by Sercomm USA and CDN's
22 suits asserting the '291 patent against similarly situated entities.

23 23. One or more of the claims of the '291 patent were invalid for failure to comply with
24 one or more of the requirements for patentability set forth in Title 35 of the U.S. Code, including
25 §§ 102, 103, and/or 112. For example, one or more of the claims of the '291 patent were invalid as
26 anticipated under 35 U.S.C. § 102 and/or obvious under 35 U.S.C. § 103 over at least one or more
27 prior art references.
28

1 24. Under 28 U.S.C. §§ 2201 and 2202, Sercomm USA is entitled to a declaratory
2 judgment that the claims of the '291 patent were invalid for failure to comply with one or more of
3 the requirements for patentability set forth in Title 35 of the U.S. Code, including §§ 102, 103,
4 and/or 112.

5 **FOURTH CLAIM FOR RELIEF**

6 **(Declaratory Judgment of License, Estoppel, and/or Exhaustion of the '699 patent)**

7 25. Sercomm USA incorporates the allegations of each preceding paragraph by reference.

8 26. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists
9 between CDN and Sercomm USA concerning license, estoppel, and/or exhaustion of rights of the
10 '699 patent, at least because of CDN's prior letter and infringement claim against products marketed
11 by Sercomm USA and CDN's suits asserting the '291 patent against similarly situated entities.

12 27. CDN voluntarily dismissed with prejudice its infringement actions against Broadcom
13 and MediaTek in the Western District of Texas respectively on August 8, 2020, and September 24,
14 2020. On information and belief, CDN granted a license or covenant of the '699 patent to Broadcom
15 and MediaTek or otherwise reached agreements to resolve CDN's purported infringement claims.

16 28. CDN's claims of infringement of the '699 patent against Sercomm USA products are
17 barred, exhausted, and/or estopped, because Sercomm USA marketed products that incorporate
18 Broadcom's and/or MediaTek's ICs and software that have been licensed, fall under CDN's
19 covenants with Broadcom and MediaTek, or are otherwise subject to estoppel.

20 **FIFTH CLAIM FOR RELIEF**

21 **(Declaratory Judgment of Non-Infringement of the '699 patent)**

22 29. Sercomm USA incorporates the allegations of each preceding paragraph by reference.

23 30. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists
24 between CDN and Sercomm USA concerning non-infringement of the '699 patent, at least because
25 of CDN's prior letter and infringement claim against products marketed by Sercomm USA and
26 CDN's suits asserting the '699 patent against similarly situated entities.

27 31. Sercomm USA had not infringed any claims of the '699 patent directly or indirectly,
28 either literally or under the doctrine of equivalents.

1 32. Under 28 U.S.C. §§ 2201 and 2202, Sercomm USA is entitled to a declaratory
2 judgment that it had not infringed any valid and enforceable claims of the '699 patent.

3 **SIXTH CLAIM FOR RELIEF**

4 **(Declaratory Judgment of Invalidity of the '699 patent)**

5 33. Sercomm USA incorporates the allegations of each preceding paragraph by reference.

6 34. An actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, exists
7 between CDN and Sercomm USA concerning invalidity of the '699 patent, at least because of
8 CDN's prior letter and infringement claim against products marketed by Sercomm USA and CDN's
9 suits asserting the '699 patent against similarly situated entities.

10 35. One or more of the claims of the '699 patent were invalid for failure to comply with
11 one or more of the requirements for patentability set forth in Title 35 of the U.S. Code, including
12 §§ 102, 103, and/or 112. For example, one or more of the claims of the '699 patent were invalid as
13 anticipated under 35 U.S.C. § 102 and/or obvious under 35 U.S.C. § 103 over at least one or more
14 prior art references.

15 36. Under 28 U.S.C. §§ 2201 and 2202, Sercomm USA is entitled to a declaratory
16 judgment that the claims of the '699 patent were invalid for failure to comply with one or more of
17 the requirements for patentability set forth in Title 35 of the U.S. Code, including §§ 102, 103,
18 and/or 112.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Sercomm USA respectfully prays that the Court enter judgment in its favor
21 and award the following relief:

22 A. Declaring that CDN has granted licenses to and/or has exhausted its rights to the '291
23 and '699 patents with respect to the products marketed by Sercomm USA;

24 B. Declaring that CDN is estopped from any further recovery regarding the '291 and
25 '699 patents for the products marketed by Sercomm USA;

26 C. Declaring that the claims of the '291 and '699 patents were invalid, unenforceable,
27 and/or not infringed by Sercomm USA;

28

1 D. For CDN to be preliminarily and permanently enjoined from asserting that Sercomm
2 USA, or their officers, agents, representatives, stockholders, and/or customers infringed any of the
3 claims of the '291 and '699 patents;

4 E. For CDN to be preliminarily and permanently enjoined from bringing suit against
5 Sercomm USA, or their officers, agents, representatives, stockholders, and/or customers, for
6 infringement of any claims of the '291 and '699 patents;

7 F. For a declaration that this case is an exceptional case under 35 U.S.C. § 285 and that
8 Sercomm USA be awarded its attorneys' fees, costs, and other expenses incurred in this action;

9 G. For Sercomm USA to be awarded any and all other relief to which Sercomm USA
10 may show itself to be entitled; and

11 H. For Sercomm USA to be awarded such other and further relief as the Court deems
12 just and proper under the circumstances.

13 **DEMAND TRIAL BY JURY**

14 Sercomm USA demands a jury trial on all matters.

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16
17 Dated: January 9, 2024

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