

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

TQ DELTA, LLC,)	
)	
Plaintiff,)	C.A. No. 13-cv-1835-RGA
)	
v.)	
)	JURY TRIAL DEMANDED
PACE AMERICAS, LLC,)	
PACE PLC, and 2WIRE, INC.)	
)	
Defendants.)	

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, TQ Delta, LLC, for its Second Amended Complaint against Defendants, Pace Americas, LLC, Pace plc, and 2Wire, Inc., alleges as follows:

THE PARTIES

1. TQ Delta, LLC (“TQ Delta” or “Plaintiff”) is a limited liability company organized and existing under the laws of the State of Delaware and having a principal place of business at 805 Las Cimas Parkway, Suite 240, Austin, Texas 78746.

2. Upon information and belief, Pace Americas, LLC (“Pace Americas” or “Defendants” when referring to the defendants collectively), formerly known as Pace Americas, Inc., is a limited liability company organized and existing under the laws of the State of Delaware and having a principal place of business at 3701 FAU Boulevard, Suite 200, Boca Raton, Florida 33431.

3. Upon information and belief, Pace plc (“Pace plc” or “Defendants” when referring to the defendants collectively) is a corporation organized and existing under the laws of the United Kingdom and having a principal place of business at Victoria Road, Saltaire, West Yorkshire, BD18 3LF, England.

TQ DELTA, LLC
Exhibit 2008

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4. Upon information and belief, 2Wire, Inc. (“2Wire” or “Defendants” when referring to the defendants collectively) is a corporation organized and existing under the laws of the State of Delaware and having a principal place of business at 1764 Automation Parkway, San Jose, California 95131. Pace plc owns and controls Pace Americas and 2Wire.

JURISDICTION AND VENUE

5. This action is for patent infringement under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

6. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Defendants at least because Pace Americas and 2Wire are incorporated in Delaware and Defendants make, use, sell, offer for sale, and/or import infringing products into this jurisdiction and/or otherwise benefit from such acts of infringement in this jurisdiction.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b) at least because Defendant Pace Americas and 2Wire are incorporated in Delaware and because Defendants regularly conduct business in this venue at least through Pace Americas and 2Wire.

BACKGROUND

9. TQ Delta is the owner by assignment of a portfolio of patents relating to digital subscriber line (“DSL”) technology, including for example asymmetric digital subscriber line (“ADSL”) technology and very-high-bit-rate digital subscriber line (“VDSL”) technology.

10. DSL technology is used to provide broadband access to data networks, such as the Internet, via copper wires of a local telephone network. More recently, DSL has been used by telephone carriers to deliver video services to subscribers.

11. Inventors of the patents at issue in this case have been substantial contributors of valuable technology to various DSL-related standards on behalf of TQ Delta and, previously, Aware, Inc., a world-leading innovator and provider of DSL technologies.

12. Defendants make, use, sell, offer for sale, and/or import customer premise equipment (“CPE”) products, including without limitation gateways, that operate in accordance with various DSL-related standards (“DSL CPE Products”).

13. TQ Delta attempted to negotiate a license with Defendants under TQ Delta’s DSL patent portfolio. On July 15, 2013, TQ Delta sent a first letter to Defendants, including an overview of TQ Delta’s DSL patent portfolio and an invitation to open licensing discussions. TQ Delta requested Defendants’ response by July 31, 2013.

14. Having received no response by July 31, 2013, TQ Delta sent a follow-up letter to Defendants on August 6, 2013, which requested Defendants’ response by August 23, 2013.

15. Having received no response, on August 23, 2013, TQ Delta sent a follow-up email to Defendants and again invited Defendants to engage in licensing discussions. This email further explained that “the use of one or more patent claims in [TQ Delta’s DSL patent] portfolio may be required to practice or otherwise comply with certain DSL-related Recommendations, Deliverables, and/or standards” and that “TQ Delta is willing to negotiate a license with Pace on a non-discriminatory basis on reasonable terms and conditions with respect to any such standard-essential patent claims.”

16. TQ Delta made a good-faith effort to negotiate a license with Defendants under TQ Delta’s DSL patent portfolio but those efforts were frustrated by Defendants’ delay and refusal to enter into an agreement with reasonable terms that would have allowed the parties to attempt to resolve their dispute outside the context of litigation.

17. Defendants have never applied for a license under TQ Delta's DSL patent portfolio.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,090,008

18. TQ Delta hereby incorporates by reference Paragraphs 1 through 17 of this Second Amended Complaint.

19. On January 3, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,090,008 (“the ‘008 patent”), entitled “System and Method for Scrambling the Phase of the Carriers in a Multicarrier Communications System.” TQ Delta is the owner and assignee of the ‘008 patent. A copy of the ‘008 patent is attached as Exhibit 1.

20. Defendants, in violation of 35 U.S.C. § 271(a), have been and are directly infringing the ‘008 patent by making, using, selling, offering to sell, or importing, without license or authority, DSL CPE Products that operate in accordance with the ITU-T VDSL2 (G.993.2) standard.

21. Upon information and belief, a reasonable opportunity for further investigation or discovery will likely show that, with knowledge of the ‘008 patent (at least as of the filing of the Complaint and/or previously at least by willful blindness or otherwise), Defendants, in violation of 35 U.S.C. § 271(b), have induced, and are inducing, the direct infringement of one or more claims of the ‘008 patent by selling, providing support for, and/or providing instructions for use of DSL CPE Products to Internet Service Providers (“ISPs”) and/or their customers with the intent to encourage those customers to infringe the ‘008 patent.

22. Upon information and belief, a reasonable opportunity for further investigation or discovery will likely show that, with knowledge of the ‘008 patent (at least as of the filing of the Complaint and/or previously at least by willful blindness or otherwise), Defendants, in violation of 35 U.S.C. § 271 (c), have contributorily infringed, and are contributorily infringing, the ‘008 patent, by selling DSL CPE Products to ISPs and their customers in the United States for use in

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