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19 Attorneys for Defendant and Counterclaimant, Packet Intelligence LLC

20 **UNITED STATES DISTRICT COURT**
 21 **NORTHERN DISTRICT OF CALIFORNIA**
 22 **SAN FRANCISCO DIVISION**

23 PALO ALTO NETWORKS, INC.,

24 Plaintiff,

25 v.

26 PACKET INTELLIGENCE LLC,

27 Defendant.
28

Case No. 3:19-cv-02471-WHO

**DEFENDANT AND COUNTERCLAIMANT
 PACKET INTELLIGENCE LLC'S ANSWER
 AND COUNTERCLAIMS**

1 PACKET INTELLIGENCE LLC,
2 Counterclaimant
3 v.
4 PALO ALTO NETWORKS, INC.
5 Counter-Defendant.

6
7 PACKET INTELLIGENCE LLC (“Packet Intelligence” and “Counterclaimant” herein)
8 makes the following answer to Plaintiff PALO ALTO NETWORKS, INC.’s (“Palo Alto
9 Networks” and “Plaintiff” herein) Original Complaint for Declaratory Judgment of Non-
10 Infringement. Packet Intelligence demands a jury trial on all issues triable as of right.

11 **NATURE OF THE ACTION**

12 1. Packet Intelligence admits that Palo Alto Networks has filed a declaratory judgment
13 action of non-infringement but denies the remaining allegations in Paragraph 1.

14 **PARTIES**

15 2. Packet Intelligence admits the allegations in Paragraph 2, upon information and
16 belief.

17 3. Packet Intelligence admits the allegations in Paragraph 3.

18 **JURISDICTION AND VENUE**

19 4. Packet Intelligence admits the allegations in Paragraph 4.

20 5. Packet Intelligence admits that it sent a notice letter to Palo Alto Networks on
21 January 18, 2019 alleging infringement of the Patents-in-Suit. Counterclaimant denies the
22 remaining allegations Paragraph 5.

23 6. Packet Intelligence admits that it has sent notice letters to other companies with
24 locations in this District but denies the remaining allegations of Paragraph 6.

25 7. Packet Intelligence admits that it acquired the Patents-in-Suit from Exar
26 Corporation of Fremont, California but denies the remaining allegations of Paragraph 7.

1 **FIRST CLAIM FOR RELIEF**

2 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '099 PATENT**

3 20. Packet Intelligence admits that Plaintiff purports to bring a declaratory judgment
4 action of non-infringement against Packet Intelligence. However, Packet Intelligence denies that
5 such declaratory judgment has any factual or legal basis and denies that Plaintiff is entitled to any
6 relief.

7 21. Packet Intelligence denies the allegations in Paragraph 21.

8 22. Packet Intelligence denies the allegations in Paragraph 22.

9 **SECOND CLAIM FOR RELIEF**

10 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '725 PATENT**

11 23. Packet Intelligence admits that Plaintiff purports to bring a declaratory judgment
12 action of non-infringement against Packet Intelligence. However, Packet Intelligence denies that
13 such declaratory judgment has any factual or legal basis and denies that Plaintiff is entitled to any
14 relief.

15 24. Packet Intelligence denies the allegations in Paragraph 24.

16 25. Packet Intelligence denies the allegations in Paragraph 25.

17 **THIRD CLAIM FOR RELIEF**

18 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '751 PATENT**

19 26. Packet Intelligence admits that Plaintiff purports to bring a declaratory judgment
20 action of non-infringement against Packet Intelligence. However, Packet Intelligence denies that
21 such declaratory judgment has any factual or legal basis and denies that Plaintiff is entitled to any
22 relief.

23 27. Packet Intelligence denies the allegations in Paragraph 27.

24 28. Packet Intelligence denies the allegations in Paragraph 28.

25 **FOURTH CLAIM FOR RELIEF**

26 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '789 PATENT**

27 29. Packet Intelligence admits that Plaintiff purports to bring a declaratory judgment
28 action of non-infringement against Packet Intelligence. However, Packet Intelligence denies that

1 such declaratory judgment has any factual or legal basis and denies that Plaintiff is entitled to any
2 relief.

3 30. Packet Intelligence denies the allegations in Paragraph 30.

4 31. Packet Intelligence denies the allegations in Paragraph 31.

5 **FIFTH CLAIM FOR RELIEF**

6 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '646 PATENT**

7 32. Packet Intelligence admits that Plaintiff purports to bring a declaratory judgment
8 action of non-infringement against Packet Intelligence. However, Packet Intelligence denies that
9 such declaratory judgment has any factual or legal basis and denies that Plaintiff is entitled to any
10 relief.

11 33. Packet Intelligence denies the allegations in Paragraph 33.

12 34. Packet Intelligence denies the allegations in Paragraph 34.

13 **PRAYER FOR RELIEF**

14 Packet Intelligence denies all allegations of Paragraphs A through D of Plaintiff's Prayer for
15 Relief and further denies that any relief should be granted to Plaintiff.

16 **AFFIRMATIVE DEFENSE OF INFRINGEMENT**

17 Packet Intelligence contends that Palo Alto Networks infringes claims of each of the
18 Patents-in-Suit directly, as well as by inducing infringement and by contributing to infringement.
19 Packet Intelligence reserves the right to amend its Answer to assert additional affirmative defenses
20 as the case progresses.

21 **COUNTERCLAIMS**

22 Plaintiff Packet Intelligence LLC, by and through its undersigned attorneys hereby
23 demands a jury trial and alleges the following in support of its Counterclaims for patent
24 infringement against Palo Alto Networks:

25 **I. THE PARTIES**

26 1. Packet Intelligence LLC is a limited liability company existing under the laws of
27 Texas since June 2012. Plaintiff maintains its principal place of business at 505 East Travis Street
28 Suite 209, Marshall, TX 75670.

1 Apparatus for Monitoring Traffic in a Network.” Packet Intelligence owns all substantial rights to
2 the ’099 Patent, including the right to sue and recover damages for all infringement thereof.
3 Documents assigning the ’099 Patent to Packet Intelligence were recorded at the USPTO on
4 February 1, 2013 at Reel/Frame 29737-613. Attached hereto as Exhibit A is a true and correct
5 copy of the ’099 Patent.

6 9. The ’099 patent has been cited as pertinent prior art by either an applicant, or a
7 USPTO examiner, during the prosecution of more than 275 issued patents and published patent
8 applications.

9 10. On December 16, 2003, the USPTO duly and legally issued U.S. Patent No.
10 6,665,725 (“the ’725 Patent”) entitled “Processing Protocol Specific Information in Packets
11 Specified by a Protocol Description Language.” Packet Intelligence owns all substantial rights to
12 the ’725 Patent, including the right to sue and recover damages for all infringement thereof.
13 Documents assigning the ’725 Patent to Packet Intelligence were recorded at the USPTO on
14 February 1, 2013 at Reel/Frame 29737-613. A true and correct copy of the ’725 Patent is attached
15 hereto as Exhibit B.

16 11. The ’725 patent has been cited as pertinent prior art by either an applicant, or a
17 USPTO examiner, during the prosecution of more than 260 issued patents and published patent
18 applications.

19 12. On August 3, 2004, the USPTO duly and legally issued U.S. Patent No. 6,771,646
20 (“the ’646 Patent”) entitled “Associative Cache Structure for Lookups and Updates of Flow
21 Records in a Network Monitor.” Packet Intelligence owns all substantial rights to the ’646 Patent,
22 including the right to sue and recover damages for all infringement thereof. Documents assigning
23 the ’646 Patent to Packet Intelligence were recorded at the USPTO on February 1, 2013 at
24 Reel/Frame 29737-613. A true and correct copy of the ’646 Patent is attached hereto as Exhibit C.

25 13. The ’646 patent has been cited as pertinent prior art by either an applicant, or a
26 USPTO examiner, during the prosecution of more than 170 issued patents and published patent
27 applications.

28

1 14. On January 4, 2005, the USPTO duly and legally issued U.S. Patent No. 6,839,751
2 (“the ’751 Patent”) entitled “Re-Using Information from Data Transactions for Maintaining
3 Statistics in Network Monitoring.” Packet Intelligence owns all substantial rights to the ’751
4 Patent, including the right to sue and recover damages for all infringement thereof. Documents
5 assigning the ’751 Patent to Packet Intelligence were recorded at the USPTO on February 1, 2013
6 at Reel/Frame 29737-613. A true and correct copy of the ’751 Patent is attached hereto as
7 Exhibit D.

8 15. The ’751 patent has been cited as pertinent prior art by either an applicant, or a
9 USPTO examiner, during the prosecution of more than 100 issued patents and published patent
10 applications.

11 16. On October 11, 2005, the USPTO duly and legally issued U.S. Patent No.
12 6,954,789 (“the ’789 Patent”) entitled “Method and Apparatus for Monitoring Traffic in a
13 Network.” Packet Intelligence owns all substantial rights to the ’789 Patent, including the right to
14 sue and recover damages for all infringement thereof. Documents assigning the ’789 Patent to
15 Packet Intelligence were recorded at the USPTO on February 1, 2013 at Reel/Frame 29737-613.
16 A true and correct copy of the ’789 Patent is attached hereto as Exhibit E.

17 17. The ’789 patent has been cited as pertinent prior art by either an applicant, or a
18 USPTO examiner, during the prosecution of more than 90 issued patents and published patent
19 applications.

20 18. Some or all of the ’099, ’725, ’646, ’751, and ’789 Patents (referred to collectively
21 as the “Asserted Patents” or the “Patents-in-Suit”) have been asserted in several patent
22 infringement litigations in the Eastern District of Texas. During the course of these District court
23 litigations, claims of the Asserted Patents have withstood multiple validity challenges. The
24 outcomes of those cases are indicative of the strength of the Asserted Patents. The following cases
25 have been litigated in the Eastern District of Texas:

- 26 • *Packet Intelligence LLC v. Huawei Devices USA Inc.*, Civil Action No. 2:13-cv-00206-
27 JRG (dismissed by stipulation of parties pursuant to settlement agreement);

- 1 • *Packet Intelligence LLC v. Cisco Systems, Inc.*, Civil Action No. 2:14-cv-00252-JRG
2 (dismissed by agreed motion and order following settlement);
- 3 • *Packet Intelligence LLC v. Cisco Systems, Inc.*, Civil Action No. 2:14-cv-01122-JRG
4 (consolidated with Civil Action No. 2:14-cv-00252-JRG);
- 5 • *Packet Intelligence LLC v. NetScout Systems, Inc. et al*, Civil Action No. 2:16-cv-
6 00230-JRG (resulting in a jury verdict finding infringement of the asserted claims of
7 the ‘725, ‘751, and ‘789 Patents and upholding validity of the same (Dkt. No. 237 at 3-
8 4); applying the constructions entered in the Court’s Claim Construction Order (Dkt.
9 No. 66) and denying defendant’s Rule 52 motion challenging the validity of claims of
10 the ‘725, ‘751, and ‘789 Patents under 35 U.S.C. 101 (Dkt. No. 298)). The Court
11 entered a Final Judgment on September 7, 2018, and the case is currently on appeal to
12 the Court of Appeals for the Federal Circuit;
- 13 • *Packet Intelligence LLC v. Sandvine Corporation and Sandvine Incorporated ULC*,
14 Civil Action No. 2:16-cv-00147-JRG (resulting in a jury verdict of non-infringement of
15 the asserted claims of the ‘725, ‘751, and ‘789 Patents; validity did not make it to the
16 jury following denial of institution of Sandvine’s Petitions for *inter partes* review of
17 the Asserted Patents and the Court’s grant of Motion *in Limine* No. 4 (Dkt. No. 22));
- 18 • Two other actions involving the Asserted Patents are currently pending in the Eastern
19 District of Texas as *Packet Intelligence LLC v. Nokia of America Corporation*, Civil
20 Action No. 2:18-cv-00382-JRG and *Packet Intelligence LLC v. Ericsson Inc.*, Civil
21 Action No. 2:18-cv-00381-JRG.

22 19. The validity of the asserted claims has been repeatedly upheld by the Patent Trial
23 and Appeal Board (“the Board”) through its denial of institution of six Petitions for *inter partes*
24 review filed by defendants in the prior litigations. Institution was denied in each of these IPRs
25 because the Board found that the respective Petitions did not establish a reasonable likelihood of
26 success in invalidating the challenged claims, comprising several of which are now asserted in the
27 present litigation. Requests for rehearing were similarly rejected by the Board.

28

1 without inspecting the packet’s payload deeper than the headers of the transport layer¹ containing
2 port information. The problem with only tracking connection flows is that certain applications and
3 protocols may generate multiple connections. In other words, a single application may spawn
4 multiple connections for a single activity. For example, if user A wants to have a Skype call with
5 user B, the Skype application may create multiple connections between computer A and B to
6 conduct the call. There might be one connection which supplies setup information, a second
7 connection for transmitting video information, and a third connection for transmitting audio
8 information. Conventional network monitors would consider these three separate connections
9 even though they originated from a single Skype call.

10 24. The Asserted Patents improved upon these conventional network monitoring
11 systems and methods by categorizing network transmissions into “conversational flows” rather
12 than merely in “connection flows.” Unlike connection flow, conversational flow is the sequence
13 of packets that are exchanged in any direction as a result of a particular activity—for instance, the
14 running of an application on a server as requested by a client—which may include multiple
15 connections, transmissions, or exchanges in either direction between the participants in the
16 conversation. This addressed the problem of disjointed flows in network communications through
17 “virtually concatenating,” or linking, all related conversational exchanges.

18 25. “Conversational flows” are identified through parsing and analyzing data packets at
19 deeper layers to extract information used to classify each data packet, determining whether it
20 belongs to an existing conversational flow or is part of a new conversational flow. This is
21 accomplished, in part, by populating a parsing/extraction operations memory and a state
22 patterns/operations and database with machine operations that implement programmable rules and
23 instructions for inspecting packets to identify patterns forming conversational flows.

24 26. Network traffic is inspected for pattern recognition to determine protocol types and
25 headers for each protocol layer. Extracted packet information is compared to stored data

26 _____
27 ¹ The functionality underlying network communications is often viewed in terms of conceptual
28 layers, such as those defined in the 7 Layer OSI Model. *See* OSI Model,
https://en.wikipedia.org/wiki/OSI_model (visited July 27, 2018). Several different protocol
options may be available at each layer to accomplish specific tasks needed by the layer above it.

1 corresponding to prior network transmissions to determine whether a current transmission belongs
2 to a known flow comprising previously inspected transmissions. Extracted data may also be used
3 to determine the different states, state transitions, and/or state operations to be performed
4 corresponding to a conversational flow to aid in predicting and/or identifying subsequent
5 transmissions within a conversational flow and/or to determine the termination of a conversational
6 flow. One of the many advantages of the invention is properly analyzing the packets exchanged
7 between a client and a server and maintaining information relevant to the current state of each of
8 these conversational flows.

9 27. Classifying transmissions in the context of conversational flows provides several
10 benefits over conventional network monitoring systems and methods, including accommodation
11 of: more flexible and effective stateful firewall operations to permit network operators greater
12 flexibility in configuring network security policies; more robust understanding of the quality of
13 service (“QoS”) and bandwidth usage of a multiple connection flow application whereby certain
14 network traffic could be excluded from data usage limits, bandwidth throttling may be applied to
15 specific applications or services, and access to certain web browser applications may be restricted
16 at specified times; and, eavesdropping or lawful interception, by cloning all of the traffic of a
17 conversational flow, which allows another user on the network, or elsewhere, to read the content
18 exchanged over the network without the knowledge of the original recipient.

19 **V. THE ACCUSED PRODUCTS**

20 28. The “Accused Products” include Palo Alto Networks products, such as firewall
21 products that include the App-ID feature other similar functionality. These products include, but
22 are not limited to: PA-Series Firewall products (PA-200, PA-220, PA-220R, PA-7000, PA-7050,
23 PA-7080; VM-Series Firewall products (VM-50, VM-100, VM-300, VM-500, VM-700) and
24 K2-Series Firewall Products.

25 29. The App-ID feature of the Accused Products allows inspection of packets at layers
26 3-7 of the OSI model to allow identification of a protocol associated with the packet and to
27 determine the particular application associated with the packet. Palo Alto Networks’
28 documentation describes this capability as shown below:

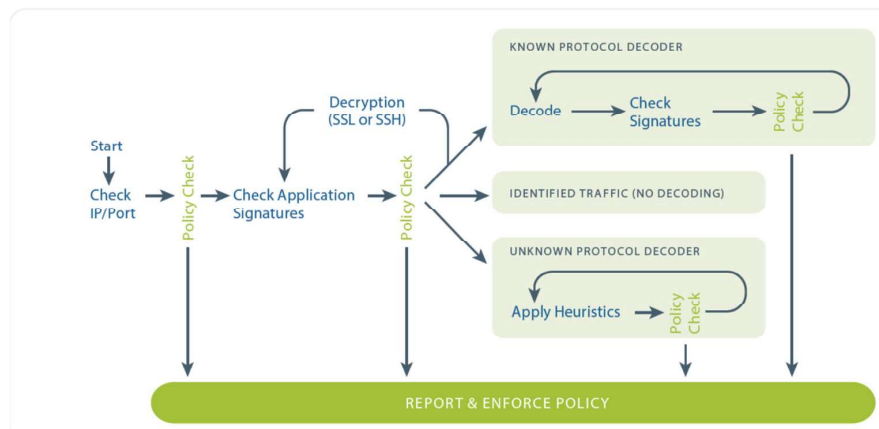
App-ID™ uses as many as four identification techniques to determine the exact identity of applications traversing the network—irrespective of port, protocol, evasive tactic, or SSL encryption. Identifying the application is the very first task performed by App-ID, providing administrators with the greatest amount of application knowledge and the most flexibility in terms of safe application.

See “App-ID Technology Brief”, at p. 1, which can be found at the URL:

<https://media.paloaltonetworks.com/documents/techbrief-app-id.pdf>.

30. A flow chart of the process by which the Accused Products identify the application to which a is shown below in Palo Alto Networks’ documentation shown below:

App-ID



See “App-ID Technology Brief”, at p. 1.

31. The flow chart shows several decision points during the processing of a packet in the App-ID feature. The Accused Products can be used to implement Quality of Service (“QOS”) policies that are applied to packets based on the application that is identified. A network operator using the Accused Products can set QOS policies that can limit the bandwidth for certain applications during peak hours or prioritize packets associated with applications requiring more bandwidth, e.g., streaming video.

COUNT I
PATENT INFRINGEMENT
U.S. Patent No. 6,651,099

1
2
3 32. Packet Intelligence realleges paragraphs 1 through 31 as though fully set forth
4 herein.

5 33. Palo Alto Networks has infringed directly and continues to infringe directly, either
6 literally or under the doctrine of equivalents, at least claim 1 of the '099 Patent by its manufacture,
7 sale, offer for sale, and use of any one or more of the Accused Products. Palo Alto Networks is
8 therefore liable for infringement of the '099 Patent pursuant to 35 U.S.C. § 271.

9 34. As of the time Palo Alto Networks first had notice of Counterclaimant's allegations
10 of infringement of one or more claims of the '099 Patent by Palo Alto Networks, which is no later
11 than the date of the notice letter sent by Packet Intelligence on January 18, 2019, Palo Alto
12 Networks indirectly infringed and continues to indirectly infringe at least claim 1 of the '099
13 Patent by active inducement under 35 U.S.C. § 271(b). Palo Alto Networks has induced, caused,
14 urged, encouraged, aided and abetted its direct and indirect customers to make, use, sell, offer for
15 sale and/or import one or more of the Accused Products, and thus indirectly infringes at least
16 claim 1 of the '099 Patent. Palo Alto Networks has done so by acts including but not limited to
17 (1) selling such products including features that—when used or resold—infringe, either literally or
18 under the doctrine of equivalents, the '099 Patent; (2) marketing the infringing capabilities of such
19 products; and (3) providing instructions, technical support, and other support and encouragement
20 for the use of such products, including at least the documents referenced above. Such conduct by
21 Palo Alto Networks was intended to and actually did result in direct infringement by Palo Alto
22 Networks' direct and indirect customers, including the making, using, selling, offering for sale
23 and/or importation of the Accused Products in the United States.

24 35. Palo Alto Networks' infringement of the '099 Patent has damaged Packet
25 Intelligence, and Palo Alto Networks is liable to Packet Intelligence in an amount to be determined
26 at trial that compensates Packet Intelligence for the infringement, which by law can be no less than
27 a reasonable royalty.

28

1 36. As of the time Palo Alto Networks first had notice of the '099 Patent, at least as
2 early as January 18, 2019, Palo Alto Networks has continued with its infringement despite the
3 objectively high likelihood that its actions constitute infringement and Palo Alto Networks'
4 subjective knowledge of this obvious risk. As Palo Alto Networks has no good faith belief that it
5 does not infringe the '099 Patent, at least Palo Alto Networks' continued infringement of the '099
6 Patent is willful and deliberate, entitling Packet Intelligence to increased damages under 35 U.S.C.
7 § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

8 **COUNT II**
9 **PATENT INFRINGEMENT**
10 **U.S. Patent No. 6,665,725**

11 37. Packet Intelligence realleges paragraphs 1 through 36 as though fully set forth
12 herein.

13 38. Palo Alto Networks has infringed directly and continues to infringe directly, either
14 literally or under the doctrine of equivalents, at least claim 17 of the '725 Patent by its
15 manufacture, sale, offer for sale, and use of any one or more of the Accused Products. Palo Alto
16 Networks is therefore liable for infringement of the '725 Patent pursuant to 35 U.S.C. § 271.

17 39. As of the time Palo Alto Networks first had notice of Counterclaimant's allegations
18 of infringement of one or more claims of the '725 Patent by Palo Alto Networks, at least as early as
19 January 18, 2019, Palo Alto Networks indirectly infringed and continues to indirectly infringe at
20 least claim 17 of the '725 Patent by active inducement under 35 U.S.C. § 271(b). Palo Alto
21 Networks has induced, caused, urged, encouraged, aided and abetted its direct and indirect
22 customers to make, use, sell, offer for sale and/or import one or more of the Accused Products,
23 and thus indirectly infringes at least claim 17 of the '725 Patent. Palo Alto Networks has done so
24 by acts including but not limited to (1) selling such products including features that—when used
25 or resold—infringe, either literally or under the doctrine of equivalents, the '725 Patent; (2)
26 marketing the infringing capabilities of such products; and (3) providing instructions, technical
27 support, and other support and encouragement for the use of such products, including at least the
28 documents referenced above. Such conduct by Palo Alto Networks was intended to and actually
did result in direct infringement by Palo Alto Networks' direct and indirect customers, including

1 the making, using, selling, offering for sale and/or importation of the Accused Products in the
2 United States.

3 40. Palo Alto Networks' infringement of the '725 Patent has damaged Packet
4 Intelligence, and Palo Alto Networks is liable to Packet Intelligence in an amount to be determined
5 at trial that compensates Packet Intelligence for the infringement, which by law can be no less than
6 a reasonable royalty.

7 41. As of the time Palo Alto Networks first had notice of the '725 Patent, at least as
8 early as January 18, 2019, Palo Alto Networks has continued with its infringement despite the
9 objectively high likelihood that its actions constitute infringement Palo Alto Networks' subjective
10 knowledge of this obvious risk. As Palo Alto Networks has no good faith belief that it does not
11 infringe the '725 Patent, at least Palo Alto Networks' continued infringement of the '725 Patent is
12 willful and deliberate, entitling Packet Intelligence to increased damages under 35 U.S.C. § 284
13 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

14 **COUNT III**
15 **PATENT INFRINGEMENT**
16 **U.S. Patent No. 6,771,646**

17 42. Packet Intelligence realleges paragraphs 1 through 41 as though fully set forth
18 herein.

19 43. Palo Alto Networks has infringed directly and continues to infringe directly, either
20 literally or under the doctrine of equivalents, at least claim 7 of the '646 Patent by its manufacture,
21 sale, offer for sale, and use of any one or more of the Accused Products. Palo Alto Networks is
22 therefore liable for infringement of the '646 Patent pursuant to 35 U.S.C. § 271.

23 44. As of the time Palo Alto Networks first had notice of Counterclaimant's allegations
24 of infringement of one or more claims of the '646 Patent by Palo Alto Networks, which is no later
25 than the January 18, 2019, Palo Alto Networks indirectly infringed and continues to indirectly
26 infringe at least claim 7 of the '646 Patent by active inducement under 35 U.S.C. § 271(b). Palo
27 Alto Networks has induced, caused, urged, encouraged, aided and abetted its direct and indirect
28 customers to make, use, sell, offer for sale and/or import one or more of the Accused Products,
and thus indirectly infringes at least claim 7 of the '646 Patent. Palo Alto Networks has done so

1 by acts including but not limited to (1) selling such products including features that—when used
2 or resold—infringe, either literally or under the doctrine of equivalents, the '646 Patent; (2)
3 marketing the infringing capabilities of such products; and (3) providing instructions, technical
4 support, and other support and encouragement for the use of such products, including at least the
5 documents referenced above. Such conduct by Palo Alto Networks was intended to and actually
6 did result in direct infringement by Palo Alto Networks' direct and indirect customers, including
7 the making, using, selling, offering for sale and/or importation of the Accused Products in the
8 United States.

9 45. Palo Alto Networks' infringement of the '646 Patent has damaged Packet
10 Intelligence, and Palo Alto Networks is liable to Packet Intelligence in an amount to be determined
11 at trial that compensates Packet Intelligence for the infringement, which by law can be no less than
12 a reasonable royalty.

13 46. As of the time Palo Alto Networks first had notice of the '646 Patent, at least as
14 early as January 18, 2019 2017, Palo Alto Networks has continued with its infringement despite
15 the objectively high likelihood that its actions constitute infringement and Palo Alto Networks'
16 subjective knowledge of this obvious risk. As Palo Alto Networks has no good faith belief that it
17 does not infringe the '646 Patent, at least Palo Alto Networks' continued infringement of the '646
18 Patent is willful and deliberate, entitling Packet Intelligence to increased damages under 35 U.S.C.
19 § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

20 **COUNT IV**
21 **PATENT INFRINGEMENT**
22 **U.S. Patent No. 6,839,751**

23 47. Packet Intelligence realleges paragraphs 1 through 46 as though fully set forth
24 herein.

25 48. Palo Alto Networks has infringed directly and continues to infringe directly, either
26 literally or under the doctrine of equivalents, at least claim 17 of the '751 Patent by its
27 manufacture, sale, offer for sale, and use of any one or more of the Accused Products. Palo Alto
28 Networks is therefore liable for infringement of the '751 Patent pursuant to 35 U.S.C. § 271.

1 49. As of the time Palo Alto Networks first had notice of Counterclaimant’s allegations
2 of infringement of one or more claims of the ’751 Patent by Palo Alto Networks, which is no later
3 than the January 18, 2109, Palo Alto Networks indirectly infringed and continues to indirectly
4 infringe at least claim 17 of the ’751 Patent by active inducement under 35 U.S.C. § 271(b). Palo
5 Alto Networks has induced, caused, urged, encouraged, aided and abetted its direct and indirect
6 customers to make, use, sell, offer for sale and/or import one or more of the Accused Products,
7 and thus indirectly infringes at least claim 17 of the ’751 Patent. Palo Alto Networks has done so
8 by acts including but not limited to (1) selling such products including features that—when used
9 or resold—infringe, either literally or under the doctrine of equivalents, the ’751 Patent; (2)
10 marketing the infringing capabilities of such products; and (3) providing instructions, technical
11 support, and other support and encouragement for the use of such products, including at least the
12 documents referenced above. Such conduct by Palo Alto Networks was intended to and actually
13 did result in direct infringement by Palo Alto Networks’ direct and indirect customers, including
14 the making, using, selling, offering for sale and/or importation of the Accused Products in the
15 United States.

16 50. Palo Alto Networks’ infringement of the ’751 Patent has damaged Packet
17 Intelligence, and Palo Alto Networks is liable to Packet Intelligence in an amount to be determined
18 at trial that compensates Packet Intelligence for the infringement, which by law can be no less than
19 a reasonable royalty.

20 51. As of the time Palo Alto Networks first had notice of the ’751 Patent, at least as
21 early as January 18, 2019, Palo Alto Networks has continued with its infringement despite the
22 objectively high likelihood that its actions constitute infringement and Palo Alto Networks’
23 subjective knowledge of this obvious risk. As Palo Alto Networks has no good faith belief that it
24 does not infringe the ’751 Patent, at least Palo Alto Networks’ continued infringement of the ’751
25 Patent is willful and deliberate, entitling Packet Intelligence to increased damages under 35 U.S.C.
26 § 284 and to attorneys’ fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

27
28

COUNT V
PATENT INFRINGEMENT
U.S. Patent No. 6,954,789

1
2
3 52. Packet Intelligence realleges paragraphs 1 through 51 as though fully set forth
4 herein.

5 53. Palo Alto Networks has infringed directly and continues to infringe directly, either
6 literally or under the doctrine of equivalents, at least claim 19 of the '789 Patent by its
7 manufacture, sale, offer for sale, and use of any one or more of the Accused Products. Palo Alto
8 Networks is therefore liable for infringement of the '789 Patent pursuant to 35 U.S.C. § 271.

9 54. As of the time Palo Alto Networks first had notice of Counterclaimant's allegations
10 of infringement of one or more claims of the '789 Patent by Palo Alto Networks, which is no later
11 than the filing date of this complaint, Palo Alto Networks, indirectly infringed and continues to
12 indirectly infringe at least claim 19 of the '789 Patent by active inducement under 35 U.S.C. §
13 271(b). Palo Alto Networks has induced, caused, urged, encouraged, aided and abetted its direct
14 and indirect customers to make, use, sell, offer for sale and/or import one or more of the Accused
15 Products, and thus indirectly infringes at least claim 19 of the '789 Patent. Palo Alto Networks
16 has done so by acts including but not limited to (1) selling such products including features that—
17 when used or resold—infringe, either literally or under the doctrine of equivalents, the '789
18 Patent; (2) marketing the infringing capabilities of such products; and (3) providing instructions,
19 technical support, and other support and encouragement for the use of such products, including at
20 least the documents referenced above. Such conduct by Palo Alto Networks was intended to and
21 actually did result in direct infringement by Palo Alto Networks' direct and indirect customers,
22 including the making, using, selling, offering for sale and/or importation of the Accused Products
23 in the United States.

24 55. Palo Alto Networks' infringement of the '789 Patent has damaged Packet
25 Intelligence, and Palo Alto Networks is liable to Packet Intelligence in an amount to be determined
26 at trial that compensates Packet Intelligence for the infringement, which by law can be no less than
27 a reasonable royalty.

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D. A judgment declaring this case exceptional under 35 U.S.C. § 285 and awarding Packet Intelligence its attorneys' fees;

E. An award of prejudgment and post-judgment interest to the full extent permitted by controlling law; and,

F. An award of costs and any further relief as the Court may deem just and proper to Packet Intelligence.

DATED: July 2, 2019

Respectfully submitted,

BARTKO ZANKEL BUNZEL & MILLER
A Professional Law Corporation

By: /s/ Brian A. E. Smith

Brian A. E. Smith
Attorneys for Defendant
Packet Intelligence LLC