

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

VirnetX Inc.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 6:11-cv-00018-LED
vs.	§	
	§	
Mitel Networks Corporation,	§	
Mitel Networks, Inc.,	§	
Siemens Enterprise Communications	§	
GmbH & Co. KG, and	§	
Siemens Enterprise Communications, Inc.	§	
	§	
Defendants.	§	
	§	

PLAINTIFF VIRNETX INC.’S THIRD AMENDED COMPLAINT

Plaintiffs VirnetX Inc. (“VirnetX”) and Science Applications International Corporation (“SAIC”) file this Third Amended Complaint against Defendants Mitel Networks Corporation, Mitel Networks, Inc., Siemens Enterprise Communications GmbH & Co. KG, Siemens Enterprise Communications, Inc., and Avaya Inc. (collectively, “Defendants”) for patent infringement under 35 U.S.C. § 271 and in support thereof would respectfully show the Court the following:

THE PARTIES

1. Plaintiff VirnetX is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business at 308 Dorla Ct., Zephyr Cove, NV 89448.

2. Science Applications International Corporation (“SAIC”) is a corporation formed under the laws of the state of Delaware with a principal place of business at 1710 SAIC Drive, Mclean, Virginia 22102. SAIC is made a party herein by the March 28, 2012 Order of

the Court [Dkt. 117], directing SAIC to join as a plaintiff in this case. Since SAIC is being joined by order of the Court, SAIC lacks sufficient knowledge to affirm or deny the other averments in this Third Amended Complaint.

3. Defendant Mitel Networks Corporation is a Canadian corporation with its principal place of business at 350 Leggett Drive, Ottawa, Ontario Canada, K2K 2W7. Defendant Mitel Networks, Inc. is an Arizona corporation with its principal place of business at 7300 W. Boston Street, Chandler, Arizona 85226. Mitel Networks Corporation and Mitel Networks, Inc. are collectively referred to as “Mitel.” Upon information and belief, Mitel regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, and as set forth below, has committed and continues to commit, tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas.

4. Defendant Siemens Enterprise Communications GmbH & Co. KG is a private company with its principal place of business at Hofmannstrasse 51, Munich D-81379. Defendant Siemens Enterprise Communications, Inc. is a Delaware corporation with its principal place of business at 1001 Yamato Road, Boca Raton, Florida 33431. Siemens Enterprise Communications GmbH & Co. KG and Siemens Enterprise Communications, Inc. are collectively referred to as “Siemens.” Upon information and belief, Siemens regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, and as set forth below, has committed and continues to commit, tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas.

5. Defendant Avaya Inc. (“Avaya”) is a private company with its principal place of business at 211 Mt. Airy Road, Basking Ridge, New Jersey 07920. Upon information and

belief, Avaya regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, and as set forth below, has committed and continues to commit, tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. § 1338.

7. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

8. This Court has personal jurisdiction over Defendants. Defendants have conducted and do conduct business within the State of Texas. Defendants, directly or through subsidiaries or intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises (including the provision of an interactive web page) its products and/or services in the United States, the State of Texas, and the Eastern District of Texas. Defendants, directly and through subsidiaries or intermediaries (including distributors, retailers, and others), has purposefully and voluntarily placed one or more of its infringing products and/or services, as described below, into the stream of commerce with the expectation that they will be purchased and used by consumers in the Eastern District of Texas. These infringing products and/or services have been and continue to be purchased and used by consumers in the Eastern District of Texas. Defendants have committed acts of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

ASSERTED PATENTS

9. On December 31, 2002, United States Patent No. 6,502,135 (“the ’135 patent”) entitled “Agile Network Protocol for Secure Communications with Assured System Availability” was duly and legally issued with Edmund Colby Munger, Douglas Charles Schmidt, Robert Dunham Short, III, Victor Larson, Michael Williamson as the named inventors after full and fair examination. VirnetX is the owner of all rights, title, and interest in and to the ’135 patent and possesses all rights of recovery under the ’135 patent. A copy of the ’135 patent is attached as Exhibit A.

10. On August 26, 2008, United States Patent No. 7,418,504 (“the ’504 patent”) entitled “Agile Network Protocol for Secure Communications Using Secure Domain Names” was duly and legally issued with Victor Larson, Robert Dunham Short, III, Edmund Colby Munger, and Michael Williamson as the named inventors after full and fair examination. VirnetX is the owner of all rights, title, and interest in and to the ’504 patent and possesses all rights of recovery under the ’504 patent. A copy of the ’504 patent is attached as Exhibit B.

11. On April 5, 2011, United States Patent No. 7,921,211 (“the ’211 patent”) entitled “Agile Network Protocol for Secure Communications Using Secure Domain Names” was duly and legally issued with Victor Larson, Robert Dunham Short, III, Edmund Colby Munger, and Michael Williamson as the named inventors after full and fair examination. VirnetX is the owner of all rights, title, and interest in and to the ’211 patent and possesses all rights of recovery under the ’211 patent. A copy of the ’211 patent is attached as Exhibit C.

COUNT ONE

PATENT INFRINGEMENT BY MITEL

12. VirnetX incorporates by reference paragraphs 1-10 as if fully set forth herein. As described below, Mitel has infringed and/or continues to infringe the '135, '504, and '211 patents.

13. Mitel's communications equipment capable of secure communication between endpoints, including at least Mitel's SIP-enabled Phones, Managed Application Server, 3300 Series Controllers, 3300 IP Communications Platform, SX-200 IP Communications Platform, and 5000 Communications Platform (hereinafter "Mitel's Communications Equipment" or "Communications Equipment"), infringes at least system claims 10 of the '135 patent. Mitel makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and thus directly infringes at least claim 10 of the '135 patent.

14. The use of Mitel's Communications Equipment as intended by Mitel infringes at least method claims 1-4, 7, 8, and 13 of the '135 patent. Mitel uses these products and thus directly infringes at least claims 1-4, 7, 8, and 13 of the '135 patent.

15. In addition, Mitel provides its Communications Equipment to resellers, consultants, and end-user customers in the United States who, in turn, use these products to infringe at least claims 1-4, 7, 8, 10, and 13 of the '135 patent.

16. Mitel indirectly infringes by inducing infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(b), because Mitel actively induces infringement of the '135 patent by resellers, consultants, and end-user customers.

17. Mitel indirectly infringes the '135 patent by contributing to infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(c), because

Mitel offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

18. Mitel's Communications Equipment, infringe at least system claims 1, 14-17, 19-22, and 26-35 of the '504 patent. Mitel makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and thus directly infringes at least claims, 1, 14-17, 19-22, and 26-35 of the '504 patent.

19. Mitel's Communications Equipment, as well as Mitel's servers, master discs, and other media that store, cache, or distribute Mitel's software, infringe at least computer readable media claims 36, 38-41, 43-47, 50-59 of the '504 patent. Mitel makes, uses, sells, offers for sale, imports, exports, imports, supplies, and/or distributes within and from the United States these products and media and thus directly infringes at least claims 36, 38-41, 43-47, 50-59 of the '504 patent.

20. Mitel's Communications Equipment as intended by Mitel infringes at least method claim 60 of the '504 patent. Mitel uses these products and thus directly infringes at least claim 60 of the '504 patent.

21. In addition, Mitel provides Mitel's Communications Equipment to resellers, consultants, and end-user customers in the United States who, in turn, use these products to infringe at least claims 1, 14-17, 19-22, 26-36, 38-41, 43-47, and 50-60 of the '504 patent.

22. Mitel indirectly infringes the '504 patent by inducing infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(b), because Mitel

actively induces infringement of the '504 patent by resellers, consultants, and end-user customers.

23. Mitel indirectly infringes the '504 patent by contributing to infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(c), because Mitel offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

24. Mitel's Communications Equipment infringes at least system claims 1, 6, 8, 9, 14-17, 19-23, and 26-35 of the '211 patent. Mitel makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and thus directly infringes at least claims 1, 6, 8, 9, 14-17, 19-23, and 26-35 of the '211 patent.

25. Mitel's Communications Equipment, as well as Mitel's servers, master discs, and other media that store, cache, or distribute Mitel's software, infringe at least computer readable media claims 36, 38-41, 43-47, 50-59 of the '211 patent. Mitel makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and media and thus directly infringes at least claims 36, 38-41, 43-47, 50-59 of the '211 patent.

26. The use of Mitel's Communications Equipment infringes at least method claim 60 of the '211 patent. Mitel uses these products and thus directly infringes at least claim 60 of the '211 patent.

27. In addition, Mitel provides its Communications Equipment, and media that stores, caches, or distributes Mitel's software to resellers, consultants, and end-user customers in the United States who, in turn, use these products to infringe at least claims 1, 6, 8, 9, 14-17, 19-23, 26-36, 38-41, 43-47, and 50-60 of the '211 patent.

28. Mitel indirectly infringes by inducing infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(b), because Mitel actively induces infringement of the '211 patent by resellers, consultants, and end-user customers.

29. Mitel indirectly infringes the '211 patent by contributing to infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(c), because Mitel offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

30. Mitel has infringed and/or continues to infringe one or more claims of the '135, '504, and '211 patents as set forth above. Mitel is liable for direct infringement, as well as indirect infringement by way of inducement and/or contributory infringement, for the '135, '504, and '211 patents pursuant to 35 U.S.C. § 271 (a), (b), (c), and/or (f) as set forth above. For VirnetX's claims of indirect infringement, Mitel's resellers, consultants, and end-user customers are direct infringers of the '135, '504, and '211 patents.

31. Mitel's acts of infringement have caused damage to VirnetX. VirnetX is entitled to recover from Mitel the damages sustained by VirnetX as a result of Mitel's wrongful acts in an amount subject to proof at trial. In addition, the infringing acts and practices of

Mitel has caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to VirnetX for which there is no adequate remedy at law, and for which VirnetX is entitled to injunctive relief under 35 U.S.C. § 283.

32. Mitel has received actual notice of infringement by virtue of the filing of this lawsuit. Mitel has also received constructive notice, as VirnetX has complied with the requirements of 35 U.S.C. § 287.

COUNT TWO

PATENT INFRINGEMENT BY SIEMENS

33. VirnetX incorporates by reference paragraphs 1-31 as if fully set forth herein. As described below, Siemens has infringed and/or continues to infringe the '135, '504, and '211 patents.

34. Siemens's communications equipment capable of secure communication between endpoints, including at least Siemens's OpenStage 15, 20, 40, 60, and 80 Series IP Phones, OptiPoint 410 S and 420 S Series IP Phones, HiPath 4000, HiPath HG 3500 IP Gateway, and OpenScape Voice (hereinafter "Siemens's Communications Equipment"), infringes at least system claims 10 and 12 of the '135 patent. Siemens makes and/or uses these systems and thus directly infringes at least claims 10 and 12 of the '135 patent.

35. The use of Siemens's Communications Equipment infringes at least method claims 1-5, 7, and 8 of the '135 patent. Siemens uses these products and thus directly infringes at least claims 1-5, 7, and 8 of the '135 patent.

36. In addition, Siemens provides Siemens's Communications Equipment to others, such as resellers and end-user customers, in the United States who, in turn, use these products to infringe at least claims 1-5, 7, 8, 10, and 12 of the '135 patent.

37. Siemens indirectly infringes by inducing infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(b), because Siemens actively induces infringement of the '135 patent by others, such as resellers and end-user customers.

38. Siemens indirectly infringes the '135 patent by contributing to infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(c), because Siemens offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

39. Siemens's Communications Equipment infringes at least system claims 1, 14-17, 19-23, and 26-35 of the '504 patent. Siemens makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and thus directly infringes at least claims 1, 14-17, 19-23, and 26-35 of the '504 patent.

40. Siemens's Communications Equipment, as well as Siemens's servers, master discs, and other media that store, cache, or distribute Siemens's software, infringe at least computer readable media claims 36, 38-41, 43-47, and 50-59 of the '504 patent. Siemens makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and media and thus directly infringes at least claims 36, 38-41, 43-47, and 50-59 of the '504 patent.

41. The use of Siemens's Communications Equipment as intended by Siemens infringes at least method claim 60 of the '504 patent. Siemens uses these products and thus directly infringes at least claim 60 of the '504 patent.

42. In addition, Siemens provides Siemens's Communications Equipment ,and media that stores, caches, or distributes Siemens's software to resellers, consultants, and end-user customers in the United States who, in turn, use these products to infringe at least claims 1, 14-17, 19-23, 26-36, 38-41, 43-47, and 50-60 of the '504 patent.

43. Siemens indirectly infringes by inducing infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(b), because Siemens actively induces infringement of the '504 patent by resellers, consultants, and end-user customers.

44. Siemens indirectly infringes the '504 patent by contributing to infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(c), because Siemens offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

45. Siemens's Communications Equipment infringes at least system claims 1, 6, 8, 9, 14-17, 19-23, and 26-35 of the '211 patent. Siemens makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and thus directly infringes at least claims 1, 6, 8, 9, 14-17, 19-23, and 26-35 of the '211 patent.

46. Siemens's Communications Equipment, as well as Siemens's servers, master discs, and other media that store, cache, or distribute Siemens's software, infringe at least

computer readable media claims 36, 38-41, 43-47, and 50-59 of the '211 patent. Siemens makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and media and thus directly infringes at least claims 36, 38-41, 43-47, and 50-59 of the '211 patent.

47. The use of Siemens's Communications Equipment as intended by Siemens infringes at least method claim 60 of the '211 patent. Siemens uses these products and thus directly infringes at least claim 60 of the '211 patent.

48. In addition, Siemens provides Siemens's Communications Equipment ,and media that stores, caches, or distributes Siemens's software to resellers, consultants, and end-user customers in the United States who, in turn, use these products to infringe at least claims 1, 6, 8, 9, 14-17, 19-23, 26-36, 38-41, 43-47, and 50-60 of the '211 patent.

49. Siemens indirectly infringes by inducing infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(b), because Siemens actively induces infringement of the '211 patent by resellers, consultants, and end-user customers.

50. Siemens indirectly infringes the '211 patent by contributing to infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(c), because Siemens offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

51. Siemens has infringed and/or continues to infringe one or more claims of the '135, '504, and '211 patents as set forth above. Siemens is liable for direct infringement, as

well as indirect infringement by way of inducement and/or contributory infringement, for the '135, '504, and '211 patents pursuant to 35 U.S.C. § 271 (a), (b), (c), and/or (f) as set forth above. For VirnetX's claims of indirect infringement, Siemens's resellers, consultants, and end-user customers are direct infringers of the '135, '504, and '211 patents.

52. Siemens's acts of infringement have caused damage to VirnetX. VirnetX is entitled to recover from Siemens the damages sustained by VirnetX as a result of Siemens's wrongful acts in an amount subject to proof at trial. In addition, the infringing acts and practices of Siemens have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to VirnetX for which there is no adequate remedy at law, and for which VirnetX is entitled to injunctive relief under 35 U.S.C. § 283.

53. Siemens has received actual notice of infringement by virtue of the filing of this lawsuit. Siemens has also received constructive notice, as VirnetX has complied with the requirements of 35 U.S.C. § 287.

COUNT THREE

PATENT INFRINGEMENT BY AVAYA

54. VirnetX incorporates by reference paragraphs 1-52 as if fully set forth herein. As described below, Avaya has infringed and/or continues to infringe the '135, '504, and '211 patents.

55. Avaya's communications equipment capable of secure communication between endpoints, including at least Avaya's 4600 and 9600 Series IP Phones, Avaya's A175 Desktop Video Device with Avaya Flare Experience, SIP Enablement Services, and Aura Session Manager (hereinafter "Avaya's Communications Equipment"), infringes at least system claims

10 and 12 of the '135 patent. Avaya makes and/or uses these systems and thus directly infringes at least claims 10 and 12 of the '135 patent.

56. The use of Avaya's Communications Equipment as intended by Avaya infringes at least method claims 1-4, 7-9, and 13 of the '135 patent. Avaya uses these products and thus directly infringes at least claims 1-4, 7-9, and 13 of the '135 patent.

57. In addition, Avaya provides Avaya's Communications Equipment to others, such as resellers and end-user customers, in the United States who, in turn, use these products to infringe at least claims 1-4, 7-10, and 12-13 of the '135 patent.

58. Avaya indirectly infringes by inducing infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(b), because Avaya actively induces infringement of the '135 patent by others, such as resellers and end-user customers.

59. Avaya indirectly infringes the '135 patent by contributing to infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(c), because Avaya offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

60. Avaya's Communications Equipment infringes at least system claims 1, 7, 14-17, 19-23, and 26-35 of the '504 patent. Avaya makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and thus directly infringes at least claims 1, 7, 14-17, 19-23, and 26-35 of the '504 patent.

61. Avaya's Communications Equipment, as well as Avaya's servers, master discs, and other media that store, cache, or distribute Avaya's software, infringe at least computer readable media claims 36, 38-41, 43-47, and 50-59 of the '504 patent. Avaya makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and media and thus directly infringes at least claims 36, 38-41, 43-47, and 50-59 of the '504 patent.

62. The use of Avaya's Communications Equipment as intended by Avaya infringes at least method claim 60 of the '504 patent. Avaya uses these products and thus directly infringes at least claim 60 of the '504 patent.

63. In addition, Avaya provides Avaya's Communications Equipment ,and media that stores, caches, or distributes Avaya's software to resellers, consultants, and end-user customers in the United States who, in turn, use these products to infringe at least claims 1, 7, 14-17, 19-23, 26-36, 38-41, 43-47, and 50-60 of the '504 patent.

64. Avaya indirectly infringes by inducing infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(b), because Avaya actively induces infringement of the '504 patent by resellers, consultants, and end-user customers.

65. Avaya indirectly infringes the '504 patent by contributing to infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(c), because Avaya offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

66. Avaya's Communications Equipment infringes at least system claims 1, 6, 8, 9, 14-17, 19-23, and 26-35 of the '211 patent. Avaya makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and thus directly infringes at least claims 1, 6, 8, 9, 14-17, 19-23, and 26-35 of the '211 patent.

67. Avaya's Communications Equipment, as well as Avaya's servers, master discs, and other media that store, cache, or distribute Avaya's software, infringe at least computer readable media claims 36, 38-41, 43-47, 50-59 of the '211 patent. Avaya makes, uses, sells, offers for sale, exports, imports, supplies, and/or distributes within and from the United States these products and media and thus directly infringes at least claims 36, 38-41, 43-47, 50-59 of the '211 patent.

68. The use of Avaya's Communications Equipment as intended by Avaya infringes at least method claim 60 of the '211 patent. Avaya uses these products and thus directly infringes at least claim 60 of the '211 patent.

69. In addition, Avaya provides its Communications Equipment, and media that stores, caches, or distributes Avaya's software to resellers, consultants, and end-user customers in the United States who, in turn, use these products to infringe at least claims 1, 6, 8, 9, 14-17, 19-23, 26-36, 38-41, 43-47, and 50-60 of the '211 patent.

70. Avaya indirectly infringes by inducing infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(b), because Avaya actively induces infringement of the '211 patent by resellers, consultants, and end-user customers.

71. Avaya indirectly infringes the '211 patent by contributing to infringement by resellers, consultants, and end-user customers, in accordance with 35 U.S.C. § 271(c), because Avaya offers to sell or sells within the United States a component of a patented machine,

manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

72. Avaya has infringed and/or continues to infringe one or more claims of the '135, '504, and '211 patents as set forth above. Avaya is liable for direct infringement, as well as indirect infringement by way of inducement and/or contributory infringement, for the '135, '504, and '211 patents pursuant to 35 U.S.C. § 271 (a), (b), (c), and/or (f) as set forth above. For VirnetX's claims of indirect infringement, Avaya's resellers, consultants, and end-user customers are direct infringers of the '135, '504, and '211 patents.

73. Avaya's acts of infringement have caused damage to VirnetX. VirnetX is entitled to recover from Avaya the damages sustained by VirnetX as a result of Avaya's wrongful acts in an amount subject to proof at trial. In addition, the infringing acts and practices of Avaya has caused, is causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to VirnetX for which there is no adequate remedy at law, and for which VirnetX is entitled to injunctive relief under 35 U.S.C. § 283.

74. Avaya has received actual notice of infringement prior to and by virtue of the filing of this lawsuit. Avaya has also received constructive notice, as VirnetX has complied with the requirements of 35 U.S.C. § 287.

75. Avaya has willfully infringed and/or does willfully infringe the '135, '504, and '211 patents.

DEMAND FOR JURY TRIAL

VirnetX hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, VirnetX prays for the following relief:

76. A judgment that Mitel, Siemens, and Avaya have and continue to directly infringe the '135 patent, contributorily infringe the '135 patent, and/or induce the infringement of the '135 patent;

77. A judgment that Mitel, Siemens, and Avaya have and continue to directly infringe the '504 patent, contributorily infringe the '504 patent, and/or induce the infringement of the '504 patent;

78. A judgment that Mitel, Siemens, and Avaya have and continue to directly infringe the '211 patent, contributorily infringe the '211 patent, and/or induce the infringement of the '211 patent;

79. A preliminary and permanent injunction preventing Mitel, Siemens, and Avaya and their respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and/or inducing the infringement of the '135 patent;

80. A preliminary and permanent injunction preventing Mitel, Siemens, and Avaya and their respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and/or inducing the infringement of the '504 patent;

81. A preliminary and permanent injunction preventing Mitel, Siemens, and Avaya and their respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and/or inducing the infringement of the '211 patent;

82. A judgment that Avaya's infringement of the '135, '504, and '211 patents has been willful;

83. A judgment and order requiring Defendants to pay VirnetX damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed;

84. A judgment and order requiring Defendants to pay VirnetX the costs of this action (including all disbursements);

85. A judgment and order requiring Defendants to pay VirnetX pre-judgment and post-judgment interest on the damages awarded;

86. A judgment and order requiring that in the event a permanent injunction preventing future acts of infringement is not granted, that VirnetX be awarded a compulsory ongoing licensing fee; and

87. This case be found an exceptional case, entitling VirnetX to attorneys' fees incurred in prosecuting this action;

88. Such other and further relief as the Court may deem just and proper.

DATED: April 4, 2012.

Respectfully submitted,

McKOOL SMITH, P.C.

/s/ Douglas A. Cawley

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who has consented to electronic service on this day, April 4, 2012. Local Rule CV-53(a)(3)(A).

/s/ Jason Cassady
Jason D. Cassady