

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

STEELHEAD LICENSING LLC,

Plaintiff,

v.

CHARTER COMMUNICATIONS, INC.,

Defendant.

C.A. No. \_\_\_\_\_

**TRIAL BY JURY DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Steelhead Licensing LLC (“Steelhead”), by and through its undersigned counsel, for its Complaint against Charter Communications, Inc. (“Charter” and/or “Defendant”), alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §271.

**THE PARTIES**

2. Plaintiff Steelhead is a Delaware limited liability with its principal place of business at 222 Delaware Avenue, PO Box 25130, Wilmington, DE 19899.

3. On information and belief, Charter is a Delaware corporation with its principal place of business at 12405 Powerscourt Dr., Ste. 100, St. Louis, MO 63131-3660. Charter can be served with process through Corporation Service Company, 2711 Centerville Rd., Ste 400, Wilmington, Delaware 19808.

4. Charter is in the business of making, using, selling, offering for sale and/or importing computer systems that control service requests transmitted from a client to a server.

## JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

6. This Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction, as well as because of the injury to Steelhead and the cause of action Steelhead has raised, as alleged herein.

7. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Delaware Long-Arm Statute, Del Code. Ann. Tit. 3, § 3104, due to at least their substantial business in this forum, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware.

8. Defendant has conducted and does conduct business within the state of Delaware, directly or through intermediaries, resellers, agents, or offers for sale, sells, and/or advertises products in Delaware that infringe U.S. Patent No. 8,082,318 (the "'318 Patent").

9. In addition to Defendant's continuously and systematically conducting business in Delaware, the causes of action against Defendant are connected (but not limited) to Defendant's purposeful acts committed in the state of Delaware, including Defendant's making, using, importing, offering for sale, or selling products which include features that fall within the scope of at least one claim of the '318 Patent.

10. Venue lies in this District under 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Defendant is subject to personal jurisdiction in this District, and has committed

and continues to commit acts of patent infringement in this District. For example, Defendant has used, sold, offered for sale, and/or imported infringing products in this District.

### **THE PATENT-IN-SUIT**

11. There is one patent at issue in this action: United States Patent No. 8,082,318 (the '318 Patent").

12. On December 20, 2011, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '318 Patent, entitled "Controlling service requests transmitted from a client to a server" after a full and fair examination. Steelhead is presently the owner of the patent and possesses all right, title and interest in and to the '318 Patent. Steelhead owns all rights of recovery under the '318 Patent, including the exclusive right to recover for past infringement. The '318 Patent is valid and enforceable. A copy of the '318 Patent is attached hereto as Exhibit A.

13. The '318 Patent contains four independent claims and twenty dependent claims. Defendant commercialize, *inter alia*, methods/systems that perform all the steps recited in one or more claim of the '318 Patent. Defendant makes, uses, imports, and sells or offers for sale systems which encompass one or more of the features recited and which perform all the steps comprised in the patented claims.

### **DESCRIPTION OF THE ACCUSED PRODUCTS**

14. Charter uses computer systems that include cable modems (CM) and cable modem termination systems (CMTS) in which the CM is a first module acting as a server module and the CMTS is a second module acting as a client module to originate and send service requests to the first module.

15. Defendant's system controls the service requests by delaying and queuing said

requests using a “scheduler”. In addition, Defendant’s system implements congestion settings when a certain consumption threshold is reached and releases the managed state if consumption decreases for a specified period of time.

16. In defendant’s system the decision to commence traffic congestion management is determined based on control information received from the CM. Furthermore, the decision to exit the congestion management settings is based on continually polling for control information to determine when the bandwidth has dropped a sufficient amount for a sufficient length of time.

**COUNT 1:  
INFRINGEMENT OF THE ’318 PATENT**

17. Plaintiff re-alleges and incorporates by reference the allegations set forth in paragraphs 1-16.

18. Taken together, either partially or entirely, the features included in Charter’s computer system infringe one or more claims of the ’318 Patent.

19. Defendant directly infringes one or more claims of the ’318 Patent by using a computer system including non-transitory storage mediums for storing software modules, which performs the process defined by one or more claims of the ’318 Patent. For example, without limitation, Defendant directly infringes at least claim 10 of the ’318 Patent by using Charter products, including use by Defendant’s employees and agents, use during product development and testing processes, and use when servicing and/or repairing portable computing devices on behalf of customers.

20. By engaging in the conduct described herein, Defendant has injured Steelhead and are thus liable for infringement of the ’318 Patent, pursuant to 35 U.S.C. §271.

21. Defendant has committed these acts of infringement without license or authorization.

22. To the extent that facts learned in discovery show that Defendant's infringement of the '318 Patent is or has been willful, Steelhead reserves the right to request such a finding at the time of trial.

23. As a result of Defendant's infringement of the '318 Patent, Steelhead has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

24. Steelhead will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Steelhead is entitled to compensation for any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

25. Steelhead has also suffered and will continue to suffer severe and irreparable harm unless this Court issues a permanent injunction prohibiting Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them from directly or indirectly infringing the '318 Patent.

#### **DEMAND FOR JURY TRIAL**

26. Steelhead demands a trial by jury of any and all causes of action.

#### **PRAYER FOR RELIEF**

Steelhead respectfully prays for the following relief:

- A. That Defendant be adjudged to have infringed the '318 Patent;
- B. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or

participation with any of them, be permanently restrained and enjoined from directly and/or indirectly infringing the '318 Patent;

C. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Steelhead for Defendant's past infringement and any continuing and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

D. An assessment of pre-judgment and post-judgment interests and costs against Defendant, together with an award of such interests and costs, in accordance with 35 U.S.C. §284;

E. That Defendant be directed to pay enhanced damages, including Steelhead's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

F. That Steelhead have such other and further relief as this Court may deem just and proper.

Dated: December 20, 2013

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