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Communications, Inc. f/k/a WildBlue
Communications, Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

VIASAT, INC.,
VIASAT COMMUNICATIONS, INC., f/k/a
WILDBLUE COMMUNICATIONS, INC.,

Plaintiffs,

vs.

SPACE SYSTEMS/LORAL, INC.,

Defendant.

CASE NO. **'12CV0260 LAB WVG**

COMPLAINT FOR:

PATENT INFRINGEMENT AND
BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This is an action for patent infringement and breach of contract relating to groundbreaking satellite communications technology ViaSat, Inc. ("ViaSat") confidentially provided to Space Systems/Loral, Inc. ("SS/L") in connection with the manufacture of ViaSat's revolutionary first satellite (known as "ViaSat-1"). Recognizing that this technology represented a

1 great leap forward in the satellite communications field, SS/L took ViaSat's ideas as its own by
2 not only attempting to patent those ideas but by also incorporating them into its satellite designs,
3 including a satellite currently being built for one of ViaSat's key competitors. SS/L's
4 misappropriation of proprietary information was not limited to ViaSat, as SS/L's pattern of using
5 the proprietary information of other companies for its own benefit extended to ViaSat's former
6 business partner and now subsidiary, ViaSat Communications, Inc. f/k/a WildBlue
7 Communications, Inc. ("WildBlue," collectively with ViaSat, "Plaintiffs"), as well. This
8 exploitation of ViaSat's and WildBlue's technologies by SS/L was in disregard of the strict
9 confidentiality agreements signed by SS/L.

10 2. Beginning in the mid-2000s, ViaSat developed next generation satellite and ground
11 equipment technologies that achieved data-carrying capacities more than ten times that of prior
12 generation satellites. ViaSat's design was truly ahead of its time. Not only did ViaSat's 100+
13 Gigabits per second ("Gbps") design greatly surpass the capacity of any single commercial
14 satellite ever built, ViaSat-1 ultimately provided more data capacity at its launch than all 40+
15 existing commercial data satellites over North America combined (a substantial portion of which
16 had been designed by SS/L). ViaSat's design was equally groundbreaking in that it was highly
17 cost-effective. ViaSat-1 achieved a ratio of cost-to-capacity that is one tenth of any commercial
18 satellite previously launched into orbit over North America. In recognition of ViaSat's innovation
19 in designing ViaSat-1, the TechAmerica Foundation awarded ViaSat the 2011 American
20 Technology Award in the field of telecommunications.

21 3. Beginning in September 2006, ViaSat filed multiple patent applications to protect
22 its technological breakthroughs. Shortly after filing those applications, ViaSat initiated a bid
23 process and conducted meetings with multiple satellite manufacturers, including SS/L, concerning
24 construction of a satellite incorporating these new technologies. Recognizing that premature
25 public disclosure or third party use of these technologies could severely compromise the
26 competitive advantage provided by ViaSat-1, ViaSat disclosed the ViaSat-1 architecture
27 incorporating its innovative satellite technologies to SS/L and the other manufacturers under the
28 terms of strict confidentiality agreements. Nearly seven months after ViaSat filed its patent

1 applications, SS/L, unbeknownst to ViaSat (and apparently hoping that ViaSat had not filed any
2 patent applications), filed the first of three patent applications using the confidential information
3 ViaSat provided to SS/L in a deliberate attempt by SS/L to claim ViaSat's ideas as its own.

4 4. Unaware of all of this, ViaSat ultimately selected SS/L to manufacture ViaSat-1 in
5 early 2008, at a cost in excess of \$200 million. ViaSat's award of the contract to SS/L was
6 contingent on SS/L's continued agreement to keep ViaSat's revolutionary design and technology
7 confidential.

8 5. SS/L did not keep the technology confidential. Instead, in June 2009, SS/L
9 announced to ViaSat's surprise that it was building a high capacity satellite at a price in excess of
10 \$200 million, named "Jupiter," for a direct competitor of ViaSat. Jupiter's design is almost
11 identical to ViaSat-1. As a result of having its own technology used against it, ViaSat now stands
12 to lose market advantage, including hundreds of thousands of customers that otherwise would
13 have been customers on ViaSat-1 or subsequent ViaSat satellites.

14 6. Moreover, SS/L's misappropriation of valuable technology was not limited to
15 ViaSat. SS/L also misappropriated a highly innovative utility gateway design patented by
16 WildBlue and disclosed to SS/L under a confidentiality agreement. Despite having received this
17 proprietary information under terms of strict confidentiality, SS/L included this valuable feature in
18 the Jupiter satellite as well.

19 7. ViaSat is informed and believes that SS/L is preparing to take orders for additional
20 high-capacity satellites incorporating ViaSat's and WildBlue's misappropriated technology.
21 ViaSat is further informed and believes that SS/L is incorporating aspects of ViaSat's proprietary
22 information and techniques as standard elements of SS/L's broadcast and data satellites. ViaSat is
23 informed and believes that many, if not all, of the satellites constructed by SS/L after receiving
24 ViaSat's groundbreaking designs improperly incorporate ViaSat's proprietary information and
25 technology. ViaSat is informed and believes that this unrestrained behavior of misappropriating
26 technologies in disregard of confidentiality protections will provide SS/L with more than one
27 billion dollars of ill-gotten gains.

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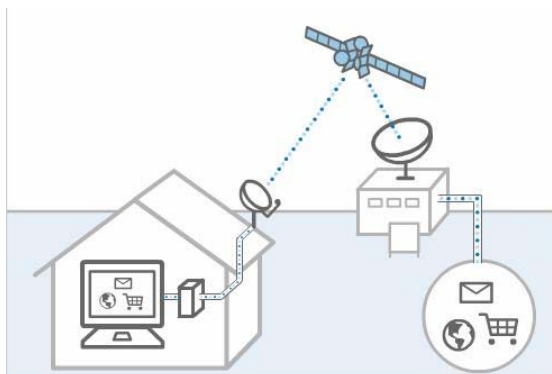
14. This Court has personal jurisdiction over SS/L for at least the following reasons:

(i) SS/L has committed acts of patent infringement and breach of contract in this State; (ii) SS/L is headquartered, regularly does business or solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from products and/or services provided to individuals in this District and in this State; (iii) the ViaSat NDA and Build Contract (as defined below) were negotiated and executed in this State; and (iv) SS/L has purposefully established substantial, systematic, and continuous contacts with this District and expects, or should reasonably expect, to be haled into court here. Thus, this Court's exercise of jurisdiction over SS/L will not offend traditional notions of fair play and substantial justice.

15. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because SS/L does business in this District, a substantial part of the events or omissions giving rise to this Complaint occurred in this District, and SS/L is subject to personal jurisdiction in this District.

FACTUAL BACKGROUND

16. The key components of a broadband satellite communications system include: (1) a satellite, which relays communications signals to and from the users and gateways, (2) gateways, which control the satellite network and connect the satellite to the internet backbone, and (3) user terminals (indoor and outdoor units) connecting users to the satellite network. A communications satellite, in essence, provides the ability to relay a communications signal through the sky. Signals are sent from gateways on the ground to the satellite, which then amplifies the signals and transmits the amplified signals back to end-users on the ground and vice versa.



1 17. For the last 25 years, ViaSat has been a leading provider of innovative satellite and
2 wireless communications networks and equipment for commercial and government users.
3 Building on its years of experience, in the early 2000s ViaSat developed the first Ka-band
4 broadband satellite internet service network for its partner (and now subsidiary) WildBlue.
5 Although the launch of the WildBlue network in the mid-2000s was fairly popular, this popularity
6 was limited to users with no broadband internet alternatives. These market limitations were due to
7 the capacity limitations and service level capabilities of WildBlue's two satellites, Anik F-2 and
8 WildBlue-1, which together provide approximately 10 Gbps of capacity. Based on the launch of
9 its SpaceWay 3 satellite with approximately 10 Gbps of capacity in 2007, Hughes
10 Communications, Inc. ("Hughes") achieved similar popularity with unserved users (that is, those
11 without a broadband internet option). WildBlue's two satellites today support approximately
12 400,000 users, and Hughes' satellite supports approximately 600,000 users, each with a lower
13 speed broadband service (for example, 1-2 Megabits per second ("Mbps")).

14
15 **ViaSat's Development of 100+ Gbps Satellite**

16 18. Based on the popularity of first generation satellite broadband services, ViaSat
17 recognized a much larger market opportunity existed for satellite broadband through the
18 development of broadband satellites with considerably more capacity that were capable of offering
19 a superior level of service to more customers. Building on its experience developing some of the
20 most advanced satellite networking and ground equipment technologies in the world, ViaSat
21 realized that a breakthrough in satellite capacity could be achieved by throwing out many
22 conventional assumptions with respect to satellite design. Some of these conventional
23 assumptions related to levels of frequency reuse, user coverage requirements, interference, satellite
24 power, beam spacing and individual beam optimization.

25 19. ViaSat's unique insights and engineering efforts resulted in the development of
26 several ground-breaking inventions that substantially increased the overall capacity of the satellite
27 system while maintaining the same level of cost.
28

1 20. First, in a traditional satellite system, the gateway and user beam signals co-exist in
2 the same geographic space. Interference is avoided by using different frequencies for gateway
3 beams and user beams. For example, previous systems, like WildBlue's WildBlue-1 satellite and
4 Hughes' Spaceway 3, located gateways within the same geographic space as the user beams.

5 21. ViaSat developed novel strategies to roughly double the limited frequency
6 bandwidth (and therefore capacity) by combining the gateway and user beam frequencies and
7 using the combined frequencies for both user beams and gateways. This doubling of frequency
8 bandwidth was achieved in part by placing the gateway beams in one portion of the United States
9 and the user beams in other portions of the United States. This separation of user beams and
10 gateway beams reduced the user coverage of the ViaSat-1 system to approximately 50% of the
11 geography of the continental U.S. However, by strategically focusing the user beams over the
12 highest population areas, ViaSat-1 was still able to achieve user coverage for approximately 75%
13 of the population and market in the continental U.S.

14 22. ViaSat also realized that the capacity increase from doubling the frequencies more
15 than offset the capacity loss from the additional interference created by having to place the
16 gateway beams and user beams in closer proximity in this system. ViaSat used proprietary tools
17 and techniques to address interference related to the placement of gateway beams near user beams.
18 Thus, while prior generation broadband satellite systems, including WildBlue-1 and Spaceway 3,
19 have 100% user coverage of the continental U.S. and much less interference, they only have
20 capacity in the range of 10 Gbps (meaning 1-2 Mbps-type services to 400,000-600,000
21 customers). In contrast, ViaSat-1 maintains coverage of approximately 75% of the continental
22 U.S. population and incurs higher levels of interference, but has capacity in excess of 100 Gbps
23 (meaning 12 Mbps-type services to in excess of one million customers). Recognizing the
24 revolutionary nature of this invention, ViaSat applied for, and received, a patent to protect its
25 research investment and its business and technical foresight. This invention is described in United

1 States Patent No. 8,107,875 (“the ‘875 patent”), entitled “Placement of Gateways Near Service
2 Beams,” which was duly issued on January 31, 2012.¹

3 23. Second, ViaSat developed pioneering technology to allow ViaSat-1 to exploit then-
4 untapped frequency spectrum. The Federal Communications Commission (“FCC”) had set aside
5 certain frequency spectrum primarily for use by a different type of satellite system (“non-
6 geostationary satellites” or “NGSO satellites”), but allowed for secondary use of this frequency
7 spectrum by geostationary satellites (“GSO satellites”) like ViaSat-1 only if they did not interfere
8 with NGSO satellite system signals. Prior proposed uses of the NGSO spectrum by GSO systems
9 required the entire beam to cease communications during an interference event thereby cutting off
10 services to all users in the beam during each interference event—an unacceptable result for
11 consumer and enterprise based services.

12 24. ViaSat recognized that because ViaSat-1 was geostationary—that is, it stayed in the
13 same place in the sky—the potential period of interference with an NGSO satellite, which moves
14 across the sky, would be temporary and relatively short, even if they utilized the same frequency.
15 ViaSat developed innovative technology that dynamically used the NGSO spectrum by enabling a
16 GSO satellite, such as ViaSat-1, to transmit and receive in both the standard GSO and NGSO
17 frequency blocks during periods of non-interference with NGSO satellite signals. The ViaSat
18 technology automatically ceases any potentially interfering transmissions in a beam whenever an
19 NGSO satellite comes into range of interference while continuing to operate in the standard GSO
20 frequencies. During such an interference event, each of the beams on the satellite continues to
21 operate, although at lower capacity levels. Using this technology, ViaSat could add further
22 additional capacity to the satellite using this valuable additional spectrum while still satisfying the
23 FCC’s interference regulations in a workable business manner. Recognizing the revolutionary
24 nature of this invention, ViaSat applied for, and received, a patent to protect its research

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26 ¹ On January 31, 2012, ViaSat filed a Request to Amend Inventorship Under 35 U.S.C. § 256
27 and 37 C.F.R. § 1.324 to add Mark Dankberg as an inventor on the ‘875 patent. When the
28 Certificate of Correction issues, the change will be retroactive to the original issue date of
January 31, 2012.

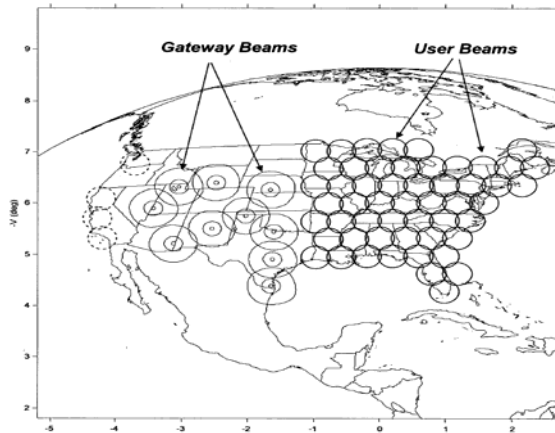
1 investment and its business and technical foresight. This invention is described in United States
2 Patent No. 8,068,827, (“the ‘827 patent”), entitled “Non-Interfering Utilization of Non-
3 Geostationary Satellite Frequency Band for Geostationary Satellite Communication,” which was
4 duly issued on November 29, 2011.

5 25. Third, ViaSat recognized that some of the chief capacity limitations from then-
6 state-of-the-art satellites were due to the improper evaluation of the combination of and trade-offs
7 among key satellite parameters, including interference levels, user coverage, spacing between
8 gateway beams, number of gateways, satellite power and individual beam optimization. Against
9 long-held conventional wisdom, ViaSat developed a system architecture that was comprised of a
10 unique combination of these key satellite parameters to further increase the capacity of the
11 network. ViaSat was able to achieve these additional capacity increases in part due to the
12 knowledge gained through development of its highly advanced ground network, which was
13 optimized to deal with the same unique combination of satellite parameters. Recognizing the
14 revolutionary nature of this invention, ViaSat applied for, and received, a patent to protect its
15 research investment and its business and technical foresight. This invention is described in United
16 States Patent No. 8,010,043, (“the ‘043 patent”), entitled “Capacity Maximization for a Unicast
17 Spot Beam Satellite System,” which was duly issued on August 30, 2011.

18 26. Fourth, ViaSat developed a sophisticated, multi-dimensional software tool, the
19 “Capacity Measurement Tool,” for modeling and statistically simulating the effects, efficiency and
20 ultimate capacity of a satellite, including the ViaSat-1 design. ViaSat developed the Capacity
21 Measurement Tool, in part, because SS/L was unable to analyze the sophisticated mathematical
22 relationships between and among these satellite parameters. No later than April 2008, ViaSat
23 licensed its Capacity Measurement Tool to SS/L for use solely with the ViaSat-1 satellite. This
24 innovative tool was invaluable in that it confirmed that the unconventional, yet pioneering satellite
25 design techniques developed by ViaSat would actually produce a functioning 100+ Gbps satellite.
26 In addition, the Capacity Measurement Tool enabled ViaSat to fine-tune the satellite parameters to
27 achieve further improvements to satellite capacity.

28

34. The '263 application further discloses spatial separation of user beams and gateways, stating "[l]ocate user beams in the Eastern US and gateway beams in the Western US," and provides the following image illustrating the spatial separation concept ViaSat had developed.



35. The '263 application also states under the heading "Summary": "A multi-beam Satellite System has been designed to maximize the total bandwidth available to many small terminal users." The application continues: "[i]n order for this to work without interference, the gateways are located outside of the user region with which they share bandwidth, and sufficiently far apart from each other that they may be served by antenna beams that are spatially isolated from each other. This approach not only maximizes the available bandwidth in each user beam, but also minimizes the number of gateways required."

36. As evidenced by the foregoing exemplary citations, by filing the '263 application without ViaSat's consent, SS/L misappropriated and misused ViaSat's confidential and proprietary information regarding its design for a 100+ Gbps satellite, including the spatial separation of user beams and gateways with frequency reuse and the dynamic use of the NGSO spectrum.

37. Following its improper filing of the '263 application in April 2007, Mr. Burr filed two additional related patent applications on behalf of SS/L: (1) United States Patent Application No. 11/891,086, entitled "Multi-Beam Satellite Network To Maximize Bandwidth Utilization" ("the '086 application") in August 2007; and (2) United States Patent Application No. 12/861,702, entitled "Multi-Beam Satellite Network To Maximize Bandwidth Utilization" ("the '702

1 application”) in August 2010. On information and belief, SS/L misappropriated and misused
 2 information in breach of its confidentiality agreements by filing the ‘263 application and by filing
 3 and prosecuting the ‘086 application and the ‘702 application. In particular, the ‘086 application,
 4 which issued to SS/L on September 7, 2010 as United States Patent No. 7,792,070, (“the ‘070
 5 patent”), entitled “Multi-beam Satellite Network to Maximize Bandwidth Utilization,” improperly
 6 describes ViaSat’s proprietary technology as SS/L’s own.

7 8 **ViaSat’s Build Contract with SS/L**

9 38. After evaluating final proposals from various satellite manufacturers, and unaware
 10 that SS/L had tried to pass ViaSat’s inventions off as its own through the ‘263 and ‘086 patent
 11 applications, ViaSat awarded the contract to manufacture the ViaSat-1 satellite to SS/L (the “Build
 12 Contract”). On January 6, 2008, ViaSat and SS/L signed the Build Contract, which outlines the
 13 parties’ rights and responsibilities with respect to the manufacture of the ViaSat-1 satellite. Of
 14 particular relevance here, the Build Contract contains three provisions regarding the use of
 15 information provided under the Build Contract.

16 39. First, the Build Contract limits a party’s use of the other’s intellectual property. In
 17 Article 39.2, ViaSat grants SS/L a limited license for the term of the Build Contract, to use
 18 “Purchaser [ViaSat] Intellectual Property . . . to the extent necessary to provide Work under the
 19 Contract.” “Purchaser Intellectual Property” is defined, in relevant part, as “Intellectual Property
 20 owned by the Purchaser [ViaSat] and provided to Contractor [SS/L] related to this Contract
 21 (before or after EDC [effective date of contract, January 7, 2008]) and all Intellectual Property
 22 Rights related thereto.” Under Section 1.101, “Purchaser Intellectual Property” also includes “any
 23 derivatives, improvements, or modifications made by Purchaser [ViaSat] or Contractor [SS/L]
 24 thereto, except for derivatives, improvements or modifications that can be used by Contractor
 25 [SS/L] without infringing or violating the preexisting Intellectual Property Rights of Purchaser
 26 [ViaSat].” “Intellectual Property,” in turn, is defined as including “all designs, techniques,
 27 analyses, methods, concepts, formulae, layouts, software, inventions (whether patented or
 28 patentable), discoveries, improvements, processes, ideas, technical data and documentation,

1 technical information, engineering, manufacturing and other drawings, specification and other
2 similar matter in which an Intellectual Property Right subsists, regardless of whether any of the
3 forgoing has been reduced to writing or practice.” “Intellectual Property Rights,” as used in
4 Article 39.2, is defined as “all common law and statutory proprietary rights with respect to
5 Intellectual Property, including patent, patent application, copyright, trademark, service mark,
6 trade secret, mask work rights, data rights, moral rights, and similar rights existing from time to
7 time under the intellectual property laws of the United States, any state or foreign jurisdiction, or
8 international treaty regime, regardless of whether such rights exist as of the date hereof or arise or
9 are required at any time in the future.”

10 40. Second, the Build Contract contains specific provisions restricting SS/L’s use of
11 the Capacity Measurement Tool. Section 22.2.3 grants SS/L a limited license to use the Capacity
12 Measurement Tool “solely for the purposes of Contractor’s [SS/L’s] measurement of the capacity
13 of the Satellite. . . .” Section 22.2.3 provides that “upon termination of the license, Contractor
14 [SS/L] will either destroy (or permanently erase) all copies of the Capacity Measurement Tool, or
15 return the original Capacity Measurement Tool to Purchaser [ViaSat].” Section 22.2.4 further
16 provides that ViaSat retains exclusive ownership of “all Intellectual Property Rights” in the
17 Capacity Measurement Tool during the licensing period; that SS/L is not granted any rights in the
18 Capacity Measurement Tool other than the limited license rights described; and that SS/L “will
19 not modify, adapt, create a derivative work of, merge, translate, decompile, disassemble or
20 otherwise reverse engineer Purchaser’s [ViaSat’s] Capacity Measurement Tool.”

21 41. Third, the Build Contract contains a “catch-all” provision restricting the disclosure
22 of “Proprietary Information” by either party to the Build Contract. Article 28.1 defines
23 “Proprietary Information” as “all confidential and proprietary information (other than Deliverable
24 Data which is subject to the provisions of Article 39), in whatever form transmitted, that is
25 disclosed or made available to directly or indirectly by [either party] . . . and (i) is identified as
26 proprietary by means of a written legend thereon or (ii) if disclosed orally, is identified as
27 proprietary at the time of initial disclosure and then summarized in a written document, with the
28 Proprietary Information specifically identified, that is supplied to the receiving party within ten

(10) days of initial disclosure.” Article 28.2 precludes either party from disclosing Proprietary Information it receives from the other for ten years after receipt. Article 28.6 further specifies that “in addition to any other rights and remedies that exist under this Contract, in the event of a breach or threatened breach of this Article, the disclosing party shall be entitled to seek an injunction prohibiting any such breach.”

WildBlue’s Utility Gateway Back Up Invention

42. Based on its experience operating the first Ka-band broadband network in the world, WildBlue engineers in mid-2006 developed a valuable invention related to using one or more utility gateways to back up the other gateways in a satellite network. This invention provides increased network reliability without the need for expensive back up facilities in each gateway beam. For example, if any gateway loses its signal (for instance due to heavy rains), the satellite can route signals from the non-functioning gateway to a single, specified back up gateway.

43. WildBlue filed a non-provisional patent application on this invention on August 29, 2007, which claimed priority to a provisional application filed on August 29, 2006. The non-provisional filing resulted in the issuance of United States Patent No. 7,773,942, (“the ‘942 patent,” collectively with the ‘875, ‘043, and ‘827 patents, “the Patents-in-Suit”), entitled “Redundant Communication Path for Satellite Communication Data,” on August 10, 2010. The ‘942 patent is directed to systems and methods for using a common utility gateway to provide back-up to a plurality of stations.

44. On April 19, 2007, WildBlue disclosed this invention to SS/L in anticipation of procuring its next broadband satellite. WildBlue disclosed this utility gateway invention to SS/L under terms of a non-disclosure agreement dated April 18, 2007 between WildBlue and SS/L (the “WildBlue NDA”). The WildBlue NDA explicitly provides, in part, that SS/L and WildBlue “each agree to keep in confidence and prevent the disclosure to any person(s) outside their respective organizations . . . or any person(s) within their organizations . . . not having a need to know, all Proprietary Information received from the other.” The WildBlue NDA further specifies

1 that “[a] Party receiving Proprietary Information will not use such Proprietary Information for
 2 purposes other than the Purpose” of the WildBlue NDA. The WildBlue NDA also states that
 3 “[b]oth Parties agree and understand that money damages would not be a sufficient remedy for
 4 breach of [the WildBlue NDA] . . . and that effective enforcement of this Agreement requires that
 5 the remedies available for any breach by a Party or its Representatives must include specific
 6 performance and/or injunctive relief.” On July 21, 2009, the parties amended the WildBlue NDA
 7 to extend its term.

8 **SS/L’s Patent Infringement and Breach of Contract**

9
 10 45. On information and belief, SS/L has infringed, and continues to infringe, the
 11 Patents-in-Suit and has breached, and continues to breach, the terms of the ViaSat NDA, Build
 12 Contract and WildBlue NDA by making, using, offering to sell or selling high-capacity broadband
 13 satellites.

14 46. For example, on or about June 16, 2009, nearly 18 months after SS/L commenced
 15 building ViaSat-1, ViaSat learned that SS/L was building a high capacity Ka-band, bent-pipe
 16 satellite, named “Jupiter,” for ViaSat’s direct competitor, Hughes. This represented a significant
 17 shift for Hughes as it had spent the last decade developing three on-board processing satellites
 18 with Boeing Satellite Systems for itself and its sister company, DirecTV, Inc. On-board
 19 processing satellites provide additional flexibility in the network due to the fact that the satellite is
 20 able to route data to specific gateways and users. In addition, these satellites include the flexibility
 21 to move some portion of the satellite’s capacity from one area to another. Although “bent-pipe”
 22 satellites, like ViaSat-1, have fixed transmission links and do not have the flexibility of on-board
 23 processed satellites, the additional equipment required on these on-board processing satellites to
 24 achieve this flexibility makes it difficult for the satellite to be optimized for capacity.

25 47. Jupiter’s design is strikingly similar to ViaSat-1, incorporating, for example, (1) the
 26 additional frequency reuse obtained by the spatial separation of user beams and gateway terminals,
 27 (2) nearly identical user beam coverage of the continental United States, (3) dynamic use of
 28 NGSO spectrum, (4) ViaSat’s inventions for optimizing the capacity of the satellite system where

1 interference is greater than noise, (5) ViaSat's inventions for minimizing interference where spot
 2 beams are proximate to gateway terminals, and (6) substantially similar gateway beam and
 3 gateway facility locations. In designing Jupiter, SS/L utilized design features, which were
 4 originally conceived by ViaSat, initially utilized in ViaSat-1 and whose advantages were made
 5 apparent only by ViaSat's proprietary simulation and modeling capabilities.

6 48. More specifically, on information and belief, Jupiter uses spatial separation of user
 7 beams and gateway beams and placement of user beams and gateway beams substantially similar
 8 to ViaSat-1's design. The figures below compare the placement of ViaSat-1's user beams and
 9 gateway beams (left) with the placement of Jupiter's user beams and gateway beams (right).



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 18 49. Thus, 18 months after SS/L agreed to manufacture ViaSat-1, SS/L sold a satellite to
 19 Hughes that was (1) the first satellite ever sold by SS/L to Hughes, (2) a significant departure from
 20 the on-board processed satellites developed by Hughes over the prior decade, and (3) nearly
 21 identical to the ViaSat-1 satellite in terms of architecture, design and capacity.

22 50. Indeed, the single most distinct difference between ViaSat-1 and Jupiter is the
 23 utility gateway feature included solely in the Jupiter satellite. However, consistent with SS/L's
 24 pattern and practice of using its customers' proprietary information for its own use, SS/L
 25 unlawfully included the utility gateway feature in the Jupiter design in breach of the WildBlue
 26 NDA. Further, the inclusion of the utility gateway invention in the Jupiter satellite not only
 27 violates the WildBlue NDA, but also infringes the '942 patent.

1 sell, and selling within the United States and/or importing into the United States certain devices,
2 including but not limited to the Jupiter satellite. These devices embody and/or practice one or
3 more claims of the '875 patent.

4 58. On information and belief, SS/L's infringement is literal or, in the alternative,
5 infringement under the doctrine of equivalents.

6 59. SS/L's infringing activities have caused and will continue to cause ViaSat
7 irreparable harm, for which it has no adequate remedy at law, unless SS/L's infringing activities
8 are enjoined by this Court in accordance with 35 U.S.C. § 283.

9 60. ViaSat has been and continues to be damaged by SS/L's infringement of the '875
10 patent in an amount to be determined at trial.

11
12 **SECOND CLAIM FOR RELIEF**
13 **(Infringement of Patent No. 8,010,043)**

14 61. Plaintiffs incorporate by reference the preceding averments set forth in paragraphs
15 1-60.

16 62. The '043 patent, entitled "Capacity Maximization for a Unicast Spot Beam Satellite
17 System," was duly and lawfully issued on August 30, 2011. A true and correct copy of the '043
18 patent is attached to this Complaint as Exhibit B.

19 63. ViaSat is the owner of all rights, title, and interest in the '043 patent, including the
20 right to bring this suit for injunctive relief and damages.

21 64. On information and belief, SS/L has been, is currently, and unless enjoined, will
22 continue to directly infringe one or more claims of the '043 patent by making, using, offering to
23 sell, and selling within the United States and/or importing into the United States certain devices,
24 including but not limited to the Jupiter satellite. These devices embody and/or practice one or
25 more claims of the '043 patent.

26 65. On information and belief, SS/L's infringement is literal or, in the alternative,
27 infringement under the doctrine of equivalents.
28

1 66. SS/L's infringing activities have caused and will continue to cause ViaSat
2 irreparable harm, for which it has no adequate remedy at law, unless SS/L's infringing activities
3 are enjoined by this Court in accordance with 35 U.S.C. § 283.

4 67. ViaSat has been and continues to be damaged by SS/L's infringement of the '043
5 patent in an amount to be determined at trial.

6 68. On information and belief, SS/L's infringement of the '043 patent was and is
7 willful and deliberate, entitling ViaSat to enhanced damages and attorneys' fees.

8
9 **THIRD CLAIM FOR RELIEF**

10 **(Infringement of Patent No. 8,068,827)**

11 69. Plaintiffs incorporate by reference the preceding averments set forth in paragraphs
12 1-68.

13 70. The '827 patent, entitled "Non-interfering Utilization of Non-Geostationary
14 Satellite Frequency Band for Geostationary Satellite Communication," was duly and lawfully
15 issued on November 29, 2011. A true and correct copy of the '827 patent is attached to this
16 Complaint as Exhibit C.

17 71. ViaSat is the owner of all rights, title, and interest in the '827 patent, including the
18 right to bring this suit for injunctive relief and damages.

19 72. On information and belief, SS/L has been, is currently, and unless enjoined, will
20 continue to directly infringe one or more claims of the '827 patent by making, using, offering to
21 sell, and selling within the United States and/or importing into the United States certain devices,
22 including but not limited to the Jupiter satellite. These devices embody and/or practice one or
23 more claims of the '827 patent.

24 73. On information and belief, SS/L's infringement is literal or, in the alternative,
25 infringement under the doctrine of equivalents.

26 74. SS/L's infringing activities have caused and will continue to cause ViaSat
27 irreparable harm, for which it has no adequate remedy at law, unless SS/L's infringing activities
28 are enjoined by this Court in accordance with 35 U.S.C. § 283.

1 75. ViaSat has been and continues to be damaged by SS/L's infringement of the '827
2 patent in an amount to be determined at trial.

3 76. On information and belief, SS/L's infringement of the '827 patent was and is
4 willful and deliberate, entitling ViaSat to enhanced damages and attorneys' fees.

5
6 **FOURTH CLAIM FOR RELIEF**
7 **(Infringement of Patent No. 7,773,942)**

8 77. Plaintiffs incorporate by reference the preceding averments set forth in paragraphs
9 1-76.

10 78. The '942 patent, entitled "Redundant Communication Path for Satellite
11 Communication Data," was duly and lawfully issued on August 10, 2010. A true and correct copy
12 of the '942 patent is attached to this Complaint as Exhibit D.

13 79. WildBlue is the owner of all rights, title, and interest in the '942 patent, including
14 the right to bring this suit for injunctive relief and damages.

15 80. On information and belief, SS/L has been, is currently, and unless enjoined, will
16 continue to directly infringe one or more claims of the '942 patent by making, using, offering to
17 sell, and selling within the United States and/or importing into the United States certain devices,
18 including but not limited to the Jupiter satellite. These devices embody and/or practice one or
19 more claims of the '942 patent.

20 81. On information and belief, SS/L's infringement is literal or, in the alternative,
21 infringement under the doctrine of equivalents.

22 82. SS/L's infringing activities have caused and will continue to cause WildBlue
23 irreparable harm, for which it has no adequate remedy at law, unless SS/L's infringing activities
24 are enjoined by this Court in accordance with 35 U.S.C. § 283.

25 83. WildBlue has been and continues to be damaged by SS/L's infringement of the
26 '942 patent in an amount to be determined at trial.

27 84. On information and belief, SS/L's infringement of the '942 patent was and is
28 willful and deliberate, entitling WildBlue to enhanced damages and attorneys' fees.

FIFTH CLAIM FOR RELIEF

(Breach of Contract)

85. Plaintiffs incorporate by reference the preceding averments set forth in paragraphs 1-84.

86. On March 8, 2006, ViaSat and SS/L executed the Non-Disclosure Agreement.

87. On April 27, 2007, ViaSat and SS/L executed Amendment Number 1 To Non-Disclosure Agreement.

88. On January 7, 2008, ViaSat and SS/L executed the Build Contract.

89. On April 18, 2007, WildBlue and SS/L executed the WildBlue NDA.

90. On July 21, 2009, WildBlue and SS/L executed Amendment Number 1 To the WildBlue NDA.

91. On information and belief, SS/L breached the ViaSat NDA by using and disclosing ViaSat's proprietary and confidential information for SS/L's benefit, including without limitation using and disclosing such information to file its own patent applications, to further its relationship with ViaSat competitors, and to develop the Jupiter and other high-capacity satellites, without ViaSat's consent and in direct violation of the terms of the ViaSat NDA.

92. On information and belief, SS/L breached the Build Contract by using and disclosing ViaSat's intellectual property and proprietary and confidential information for SS/L's benefit, including without limitation using and disclosing such information to file and prosecute its own patent applications, to further its relationship with ViaSat competitors, and to develop the Jupiter and other high-capacity satellites, without ViaSat's consent and in direct violation of the terms of the Build Contract.

93. On information and belief, SS/L breached the WildBlue NDA by using and disclosing WildBlue's proprietary and confidential information for SS/L's benefit, including without limitation using and disclosing such information to further its relationship with WildBlue's competitors, and to develop aspects of the Jupiter and other high-capacity satellites, without WildBlue's consent and in direct violation of the terms of the WildBlue NDA.

94. As a direct and proximate result of SS/L's above breaches, ViaSat and WildBlue have been damaged in an amount to be proven at trial, including but not limited to lost profits, loss of business, indirect, special, incidental, exemplary, consequential, and/or punitive damages. As specified in the ViaSat NDA, the Build Contract and the WildBlue NDA and acknowledged by the parties, the damages incurred by ViaSat and WildBlue due to SS/L's unlawful use and disclosure of ViaSat and WildBlue's intellectual property and proprietary and confidential information cannot be adequately remedied by damages alone, and ViaSat and WildBlue are also entitled to equitable relief.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that:

A. Judgment be entered that SS/L has infringed one or more claims of each of the Patents-in-Suit;

B. Judgment be entered permanently enjoining SS/L, its directors, officers, agents, servants, and employees, and those acting in privity or in concert with them, and their subsidiaries, divisions, successors and assigns, from further acts of infringement of the Patents-in-Suit;

C. Judgment be entered awarding Plaintiffs all damages adequate to compensate them for SS/L's infringement of the Patents-in-Suit, including trebling of all damages awarded with respect to infringement of the '827, '043, and '942 patents, and all pre-judgment and post-judgment interest on all damages awarded for infringement of the Patents-in-Suit at the maximum rate permitted by law;

D. Judgment be entered that this is an exceptional case and awarding Plaintiffs attorneys' fees and costs;

E. Judgment be entered that SS/L has breached its contracts with Plaintiffs;

F. Judgment be entered permanently enjoining SS/L from further breach of its contracts with Plaintiffs;

G. Judgment be entered awarding Plaintiffs all appropriate damages for SS/L's breach of its contracts with SS/L;

1 H. Judgment be entered awarding all other relief as the Court deems proper.

2
3
4 DATED: February 1, 2012

Respectfully submitted,

5 QUINN EMANUEL URQUHART &
6 SULLIVAN, LLP

7 By /s/ Sean S. Pak
8 Sean S. Pak

9 Attorneys for Plaintiffs ViaSat, Inc. and ViaSat
10 Communications, Inc. f/k/a WildBlue
11 Communications, Inc.
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DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Plaintiffs ViaSat, Inc. and ViaSat Communications, Inc. f/k/a WildBlue Communications, Inc. demand a trial by jury on all issues triable by jury.

DATED: February 1, 2012

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By /s/ Sean S. Pak
Sean S. Pak

Attorneys for Plaintiffs ViaSat, Inc. and ViaSat
Communications, Inc. f/k/a WildBlue
Communications, Inc.

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

VIASAT, INC., VIASAT COMMUNICATIONS, INC., f/k/a
WILDBLUE COMMUNICATIONS, INC.,

(b) County of Residence of First Listed Plaintiff San Diego County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

[SEE ATTACHMENT]

DEFENDANTS

SPACE SYSTEMS/LORAL, INC.

County of Residence of First Listed Defendant Santa Clara County
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'12CV0260 LAB WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise	PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Federal Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury PERSONAL INJURY ☐ 362 Personal Injury - Med. Malpractice ☐ 365 Personal Injury - Product Liability ☐ 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus - Alien Detainee ☐ 465 Other Immigration Actions	☐ 422 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS ☐ 820 Copyrights ☒ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS—Third Party 26 USC 7609	☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Acts ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Information Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes
REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Torts to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 Amer. w/Disabilities - Employment ☐ 446 Amer. w/Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus: ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus & Other ☐ 550 Civil Rights ☐ 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
35 U.S.C. § 271, et seq., 28 U.S.C. §§ 1338(a), 2201, and 2202

Brief description of cause:
Patent infringement and breach of contract

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/01/2012

SIGNATURE OF ATTORNEY OF RECORD

/s/ Sean S. Pak

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

ATTACHMENT TO CIVIL COVER SHEET

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