

TO:  <p style="text-align: center;"><b>Commissioner of Patents P.O. Box 1450 Alexandria, VA 22313-1450</b></p>	<p><b>REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK</b></p>
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Colorado on the following **Patents**

DOCKET NO. <b>12-cv-1346</b>	DATE FILED <b>05/23/2012</b>	U.S. DISTRICT COURT <b>FOR THE DISTRICT OF COLORADO</b>
PLAINTIFF Fiber, LLC		DEFENDANT NEC Corporation
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK
1	6,430,332	Please see copy of Complaint attached hereto
2	7,095,917	
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR	DATE OF PATENT	HOLDER OF PATENT OR TRADEMARK	
1			
2			
3			
4			
5			

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK <b>GREGORY C. LANGHAM</b>	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

TO: <b>Mail Stop 8</b> <b>Director of the U.S. Patent and Trademark Office</b> <b>P.O. Box 1450</b> <b>Alexandria, VA 22313-1450</b>	<b>REPORT ON THE</b> <b>FILING OR DETERMINATION OF AN</b> <b>ACTION REGARDING A PATENT OR</b> <b>TRADEMARK</b>
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Western District of Texas, Austin Division on the following

Trademarks or  Patents. (  the patent action involves 35 U.S.C. § 292.)

DOCKET NO. 1:12-CV-439-SS	DATE FILED 5/17/2012	U.S. DISTRICT COURT Western District of Texas, Austin Division
PLAINTIFF Packless Metal Hose, Inc.		DEFENDANT New DongHae Refrigeration Parts Co., Ltd.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see attached		
2 5,803,128		
3		
4		
5		

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
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4		
5		

In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK William G. Putnicki	(BY) DEPUTY CLERK <i>Olga Schroeder</i>	DATE 5/17/2012
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Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
 Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

<b>PACKLESS METAL HOSE, INC.</b>	§	
	§	
<b>Plaintiff,</b>	§	<b>Civil Action No. 1:12-cv-439</b>
	§	
<b>v.</b>	§	
	§	
<b>NEW DONGHAE REFRIGERATION PARTS CO., LTD.</b>	§	
	§	<b>JURY TRIAL DEMANDED</b>
<b>Defendant.</b>	§	

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**COMPLAINT**

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**The Parties**

1. Plaintiff Packless Metal Hose, Inc. (hereinafter "Plaintiff") is a company located in Waco, Texas and with a mailing address of P.O. Box 20668, Waco, Texas 76702.

2. Upon information and belief, Defendant New DongHae Refrigeration Parts Co., Ltd. ("Defendant") is a Korean company with its principal place of business at 102-1101, Bucheon, Techno Park 111, 36-1, Samjung-Dong, Ojung-Gu, Bucheon, Gyeonggi-Do, Korea and a factory at 805-3, Manrong Village, West St., Hunhe Dongling District, Shenyang, China.

**Jurisdiction and Venue**

3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1338 because this action is for patent and copyright infringement and arises under the Patent and Copyright Laws of the United States, Title 35 of the United States Code.

4. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

## GENERAL AVERMENTS

### Plaintiff's Patent Rights

5. Plaintiff makes and sells certain products, including vibration absorbers.

6. United States Patent No. 5,803,128 ("the '128 Patent") was duly and legally issued (the "Patent").

7. Plaintiff is the owner of all rights in and to the Patent.

### Plaintiff's Copyrights

8. In order to market and sell its vibration absorbers, Plaintiff uses certain language, photographs, and drawings for its products (collectively, the Photographs and Drawings). These Photographs and Drawings were contained in documents entitled "Packless Vibration Absorber Installation Instructions," and different versions of "Packless Vibration Absorbers Bulletin VA-1."

9. The Photographs and Drawings are wholly original and copyrightable subject matter under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, as amended.

10. Plaintiff has complied with the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, as amended, by filing applications to secure for itself the exclusive rights and privileges in the copyrights in and to the Photographs and Drawings.

### Defendant and its Infringing Activities

11. Defendant is in the business of making, having made, using, selling, offering for sale, and/or importing various types of vibration absorbers.

12. Defendant offers to sell and/or sell its infringing vibration absorbers in the state of Texas and this district.

13. The activities of Defendant have been without authorization from Plaintiff.

14. Additionally, Defendant has, without permission, copied certain of Plaintiff's Photographs and Drawings and reproduced, publicly displayed, created derivative works thereof, and/or distributed copies of them in their advertising and sales materials. This copying was done by Defendant, without limitation, in documents entitled "Vibration Absorber," "Coolmate Vibration Absorber Installation Instructions," "Vibration Absorber Suction Accumulator Refrigerant Receiver," and "Vibration Absorbers."

15. Defendant's violation of Plaintiff's copyrights in the Photographs and Drawings can be demonstrated by viewing a comparison of Plaintiff's copyrighted Photographs and Drawings to Defendant's materials.

#### **COUNT I - PATENT INFRINGEMENT**

16. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 15 of this Complaint as if fully set forth herein.

17. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

18. Defendant has infringed and continues to infringe the Patent under 35 U.S.C. § 271 *et seq.* This infringement was and is willful and intentional.

19. Defendant has, without authority, consent, right or license, and in direct infringement of the Patent, made, used, sold, offered to sell, and/or imported products in this country, and, upon information and belief, such products have been offered for sale, sold, and used in the state of Texas and this district.

20. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

**COUNT II - INDUCEMENT OF PATENT INFRINGEMENT**

21. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 20 of this Complaint as if fully set forth herein.

22. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code, in particular under 35 U.S.C. § 271(b).

23. Defendant has, in this country, actively and/or intentionally induced others to use products that infringe the Patent, and, upon information and belief, have induced others to use products that infringe the Patent in the state of Texas and in this district.

24. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

**COUNT III - CONTRIBUTORY PATENT INFRINGEMENT**

25. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 25 of this Complaint as if fully set forth herein.

26. This cause of action arises under the Patent Laws of the United States, Title 35, United States Code.

27. Defendant is furthermore liable for contributory infringement, pursuant to 35 U.S.C. § 271(c), in that Defendant has made, imported and/or sold within the United States a component of a patented machine, manufacture, composition, combination, or system, and/or a material or apparatus for use in practicing a patented process, including a material part of the invention, knowing the same to be especially made or adapted for use in the infringement of the Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use, and, upon information and belief, have done such activities in the state of Texas and in this district.

28. Defendant's infringing conduct is willful, intentional, and unlawful and, upon information and belief, will continue unless enjoined by this Court.

#### **COUNT IV – WILLFUL COPYRIGHT INFRINGEMENT**

29. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. Plaintiff's cause of action for copyright infringement arises under the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, as amended, particularly 17 U.S.C. §§ 106(1)-(3), 501, and 602.

31. Defendant has willfully, deliberately, and unlawfully copied Plaintiff's Photographs and Drawings in the creation of Defendant's advertising and sales materials. Defendant has impermissibly reproduced, publicly displayed, created derivative works thereof, and/or distributed Plaintiff's Photographs and Drawings. Such acts have been without the permission of Plaintiff and constitute willful and deliberate infringements of Plaintiff's copyrights in Plaintiff's Photographs and Drawings in derogation of 17 U.S.C. §§ 106(1)-(3), 501, and 602.

#### **DAMAGES**

32. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 31 of this Complaint as if fully set forth herein. Plaintiff has suffered, is suffering, and will continue to suffer irreparable harm and injury as a result of Defendant's aforesaid activities. Defendant will, unless restrained and enjoined, continue to act in the unlawful manner complained of herein, all to Plaintiff's irreparable damage. Plaintiff's remedy at law is not adequate to compensate it for the injuries suffered and threatened. By reason of Defendant's acts

complained of herein, Plaintiff has suffered monetary damages in an amount that has not yet been determined.

### **REQUEST FOR JURY TRIAL**

33. Plaintiff hereby demands that this cause be tried by a jury.

### **PRAYER**

34. WHEREFORE, Plaintiff demands:

A. That Defendant and its agents, officers, directors, employees, servants, representatives, customers, privies, successors and assigns, and all holding by, through or under Defendant, and all those acting for or on the behalf of Defendant, or in active concert, participation, or combination with Defendant, be enjoined and restrained, immediately and preliminarily (i.e., a temporary restraining order, preliminary injunction, and/or permanent injunction as deemed appropriate by the Court), during the pendency of this action and permanently thereafter from, in the United States:

- (1) making, using, offering to sell, selling and/or importing the infringing products, or any colorable imitation thereof,
- (2) inducing others from infringing the Patent, and/or contributing to the infringement of the Patent by others;
- (3) otherwise infringing upon the Patent;
- (4) reproducing, publicly displaying, creating derivative works thereof, and/or distributing Plaintiff's copyrighted material, and
- (5) otherwise violating Plaintiff's copyrights.

B. That this Court order Defendant and its agents, officers, directors, employees, servants, representatives, customers, privies, successors and assigns, and all holding

by, through or under Defendant, and all those acting for or on the behalf of Defendant, or in active concert, participation, or combination with Defendant, to deliver up to this Court, and to permit the seizure by Officers appointed by the Court of all articles and materials infringing upon the rights of Plaintiff, and particularly, without limitation, all products and materials which embodies or includes the infringing products and materials, and to be delivered up for destruction on the issuance of a final Order in this action, including all infringing products and materials, and Defendant submit in writing, under oath, a description of all actions taken to comply with this portion of the Order.

C. That Defendant be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendant's infringement of the Patent.

D. That, in the alternative, a reasonable royalty be awarded to Plaintiff pursuant to 35 U.S.C. § 284.

E. That Defendant be ordered to account for and pay over to Plaintiff all their respective gains, profits and advantages derived from the infringement of the Patent or such damages as to the Court shall appear proper within the patent laws.

F. That Defendant be ordered to pay Plaintiff enhanced damages (*e.g.*, treble damages).

G. An accounting for and an award of the profits earned by Defendant as a result of its illegal acts related to Plaintiff's copyrights and the damages suffered by Plaintiff as a result of Defendant's illegal acts related to Plaintiff's copyrights or, if so elected by Plaintiff at any time prior to final judgment, an award of the maximum statutory damages of \$150,000 per copyrighted work infringed, or such other amount of statutory damages the Court deems just.

H. That Defendant be ordered to pay to Plaintiff the costs of this action, prejudgment interest, and post-judgment interest.

I. That this case be found to be exceptional.

J. That Defendant be ordered to pay Plaintiff's reasonable attorneys' fees, experts' fees, and costs.

K. That Plaintiff be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ Ryan T. Beard  
Eric B. Meyertons  
Texas State Bar No. 14004400  
emeyertons@intprop.com  
Dwayne K. Goetzel  
Texas State Bar No. 08059500  
dgoetzel@intprop.com  
Ryan T. Beard  
Texas State Bar No. 24012264  
rbeard@intprop.com  
MEYERTONS, HOOD, KIVLIN,  
KOWERT & GOETZEL, P.C.  
700 Lavaca, Suite 800  
Austin, Texas 78701  
(512) 853-8800 (telephone)  
(512) 853-8801 (facsimile)

**ATTORNEYS FOR PLAINTIFF  
PACKLESS METAL HOSE, INC.**

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

Civil Action No.: \_\_\_\_\_

FIBER, LLC, a Wyoming limited liability company,

Plaintiff,

v.

NEC CORPORATION, a Japanese corporation, and  
NEC CORPORATION OF AMERICA, a Nevada corporation,

Defendants.

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**COMPLAINT FOR PATENT INFRINGEMENT AND JURY DEMAND**

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Plaintiff, Fiber, LLC, a Wyoming limited liability company ("Plaintiff"), through its counsel Lathrop & Gage, LLP, submits the following Complaint for Patent Infringement and Jury Demand, alleging as follows:

**INTRODUCTION**

1. This is an action for patent infringement and damages under the United States patent laws, 35 U.S.C. § 271 *et seq.* Specifically, Plaintiff is a Colorado-based company that has been dedicated to the advancement of optical fiber optic switching technology. Plaintiff is the exclusive assignee of patents that disclose technology that is instrumental to photonic switch products. Defendants NEC Corporation and NEC Corporation of America make, use, offer for sale and/or sell within the United States and/or imports into the United States products infringing Plaintiff's patents-in-suit.

**THE PARTIES**

2. Plaintiff is a Wyoming corporation with its principal place of business at 621 17th Street, Suite 801, Denver, Colorado 80293. Plaintiff is registered to do business in Colorado as a foreign limited liability company.

3. Defendant NEC Corporation ("NEC"), is a Japanese company with its principal place of business at 7-1, Shiba 5-chome, Minato-ku, Tokyo 108-8001, Japan, and, on information and belief, does business in this judicial District and elsewhere throughout the United States. NEC is the parent company of defendant NEC Corporation of America. At all times relevant to this lawsuit, NEC manufactured, sold and distributed infringing products to customers throughout the United States and elsewhere.

4. Defendant NEC Corporation of America ("NECAM") is a Nevada corporation with its principal place of business at 6535 North State Highway 161, Irving, Texas 75039, and, on information and belief, does business in this judicial District and elsewhere throughout the United States. Defendant NECAM is a wholly-owned subsidiary of NEC. NEC holds out NECAM as its Regional Headquarters in North America and does business in the United States, including the sale and distribution of products infringing the patents-in-suit, through NECAM.

**JURISDICTION AND VENUE**

5. This is an action for patent infringement and for damages under United States patent laws, 35 U.S.C. §§ 271, *et seq.* This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over the Defendants. NEC, on its own and through NECAM, conducts continuous and systematic business in the United States including,

upon information and belief, in this judicial District. Defendants NEC and NECAM market, manufacture, offer for sale, sell and/or distribute the infringing products at issue in this case throughout the United States including, upon information and belief, within this judicial District.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because each defendant is either an alien corporation or, upon information and belief, transacts business within this District, and because all defendants have committed acts of infringement of the patents-in-suit in this District.

#### **GENERAL ALLEGATIONS AND PATENTS-IN-SUIT**

8. On May 12, 1999, Patent Application No. 09/310,285 ("the '285 Application") was filed with the U.S. Patent and Trademark Office ("USPTO") to protect the invention of Herzel Laor, David A. Krozier, and Leo A. Plouffe entitled "OPTICAL SWITCHING APPARATUS", which application claimed the benefit from Provisional Application No. 60/088,239, filed June 5, 1998. On August 6, 2002, the USPTO issued United States Patent No. 6,430,332 B1 ("the '332 Patent") entitled "OPTICAL SWITCHING APPARATUS" from the '285 Application. The ownership rights to the invention disclosed and claimed in the '332 Patent have been assigned to Plaintiff as exclusive assignee in an assignment recorded with the USPTO. A copy of the '332 Patent is attached as **Exhibit 1** and incorporated herein by this reference.

9. On June 17, 2002, Patent Application No. 10/197,636 ("the '636 Application") was filed with USPTO as a Continuation of the '285 Application to protect the invention of Herzel Laor, David A. Krozier, and Leo A. Plouffe entitled "OPTICAL SWITCHING APPARATUS", which application claimed the benefit from Provisional Application No. 60/088,239, filed June 5, 1998. On August 22, 2006, the USPTO issued United States Patent

No. 7,095,917 B2 ("the '917 Patent") entitled "OPTICAL SWITCHING APPARATUS" from the '636 Application. The ownership rights to the invention disclosed and claimed in the '917 Patent have been assigned to Plaintiff as exclusive assignee in an assignment recorded with the USPTO. A copy of the '917 Patent is attached as **Exhibit 2** and incorporated herein by this reference.

10. Defendants NEC and NECAM themselves and/or through their respective divisions, subsidiaries and/or agents are engaged in the business of manufacturing, using, distributing and selling photonic switches that infringe the '332 Patent and the '917 Patent (the "Infringing Products"). The Infringing Products include, without limitation, products marketed and sold by defendants as SpectralWave DW4000 and SpectralWave DW4200.

11. Upon information and belief, Defendants market, offer for sale, sell, and/or distribute the Infringing Products throughout the United States, including in Colorado and/or import the Infringing Products into the United States.

**FIRST CLAIM FOR RELIEF**  
(Infringement of the '332 patent)

12. Plaintiff incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 11.

13. Defendants NEC and NECAM are infringing, literally or under the doctrine of equivalents, the '332 Patent, including at least Claims 101-104, 112-115, and 123-126 in violation of 35 U.S.C. § 271(a) by making, using, selling, offering to sell, and/or importing the Infringing Products in the United States.

14. Defendants' infringement of the '332 Patent has caused and will continue to cause great damage to Plaintiff and is thereby entitled to an award of damages adequate to compensate it for the infringement in an amount that is in no event less than a reasonable royalty pursuant to

35 U.S.C. § 284. Plaintiff is also entitled to recover prejudgment interest, post-judgment interest, costs, and enhanced damages under 35 U.S.C. § 284.

15. As a result of Defendants' infringement of the '332 Patent, Plaintiff will suffer irreparable harm and impairment of the value of its patent rights, and is now suffering the violation of its patent rights, all of which will continue unless Defendant is permanently enjoined by this Court from infringing the '332 Patent under 35 U.S.C. § 283.

**SECOND CLAIM FOR RELIEF**  
(Infringement of the '917 patent)

16. Plaintiff incorporates by reference as though fully set forth herein the allegations of paragraphs 1 through 15.

17. Defendants NEC and NECAM are infringing, literally or under the doctrine of equivalents, the '917 Patent, including at least Claims 53-61 in violation of 35 U.S.C. § 271(a) by making, using, selling, offering to sell, and/or importing the Infringing Products in the United States.

18. Defendants' infringement of the '917 Patent has caused and will continue to cause great damage to Plaintiff and is thereby entitled to an award of damages adequate to compensate it for the infringement in an amount that is in no event less than a reasonable royalty pursuant to 35 U.S.C. § 284. Plaintiff is also entitled to recover prejudgment interest, post-judgment interest, costs, and enhanced damages under 35 U.S.C. § 284.

19. As a result of Defendants' infringement of the '917 Patent, Plaintiff will suffer irreparable harm and impairment of the value of its patent rights, and is now suffering the violation of its patent rights, all of which will continue unless Defendant is permanently enjoined by this Court from infringing the '332 Patent under 35 U.S.C. § 283.

**WHEREFORE**, Plaintiff prays for judgment against defendants NEC and NECAM as

follows:

- A. Finding that the '332 Patent has been infringed by defendants, and each of them;
- B. Finding that the '917 Patent has been infringed by defendants, and each of them;
- C. Awarding Plaintiff a permanent final injunction against continuing infringement by each of defendants, and each of defendants' respective parents, subsidiaries, divisions, officers, employees, successors, and assigns, enjoining them from making, using, selling, practicing, or offering to sell the inventions disclosed in the '332 and '917 Patents;
- D. Awarding Plaintiff damages adequate to compensate Plaintiff for past and future infringement in an amount that is in no event less than a reasonable royalty attorneys' fees, costs, prejudgment interest, and post-judgment interest;
- E. Awarding Plaintiff an additional sum on account of the willful, intentional and deliberate character of defendants' infringing acts pursuant to 15 U.S.C. § 1117 and 35 U.S.C. § 284; and
- F. Granting Plaintiff all other legal and equitable relief to which Plaintiff is entitled.

Date: May 23, 2012

s/ George G. Matava

George G. Matava  
Aaron P. Bradford  
Alexander C. Clayden  
LATHROP & GAGE, LLP  
950 17<sup>th</sup> Street, Suite 2400  
Denver, Colorado 80202  
Telephone: (720) 931-3200  
Facsimile: (720) 931-3201  
E-mail: [gmatava@lathropgage.com](mailto:gmatava@lathropgage.com)  
[abradford@lathropgage.com](mailto:abradford@lathropgage.com)  
[aclayden@lathropgage.com](mailto:aclayden@lathropgage.com)

Of Counsel:

William A. Rudy  
245 Grand Blvd.  
Suite 2200  
Kansas City, MO 64108  
Telephone: (816) 292-2000  
Facsimile: (816) 292-2001

*Attorneys for Plaintiff Fiber, LLC*

ADDRESS OF FIBER, LLC  
621 17th Street, Suite 801  
Denver, Colorado 80293

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38, Plaintiff Fiber, LLC demands a trial by jury on all issues so triable.