

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UBICOMM, LLC,

Plaintiff,

v.

DELL, INC.,

Defendant.

Civil Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff UbiComm, LLC (“UbiComm” or “Plaintiff”), for its complaint against Defendant Dell, Inc. (“Dell” or “Defendant”), hereby alleges as follows:

NATURE OF THE ACTION

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

THE PARTIES

2. Plaintiff UbiComm, LLC is a Delaware limited liability company organized with its place of business at 1220 N. Market Street, Suite 806, Wilmington, Delaware 19801.

3. Upon information and belief, Defendant Dell is a Delaware corporation with its principal place of business at 1 Dell Way, Round Rock, TX 78682.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).

6. Dell is subject to the jurisdiction of this Court by virtue of the fact it is incorporated in Delaware. Upon information and belief, Dell is also subject to the jurisdiction of this Court by reason of its acts of patent infringement which have been committed in this Judicial District, and by virtue of its regularly conducted and systematic business contacts in this State. As such, Dell has purposefully availed itself of the privilege of conducting business within this Judicial District; has established sufficient minimum contacts with this Judicial District such that it should reasonably and fairly anticipate being haled into court in this Judicial District; has purposefully directed activities at residents of this State; and at least a portion of the patent infringement claims alleged herein arise out of or are related to one or more of the foregoing activities.

THE PATENTS-IN-SUIT

7. On September 10, 1996, United States Patent No. 5,555,376 (the “’376 Patent”), entitled “Method For Granting A User Request Having Locational And Contextual Attributes Consistent With User Policies For Devices Having Locational Attributes Consistent With The User Request,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’376 Patent is attached as Exhibit A to this Complaint.

8. UbiComm is the assignee and owner of the right, title and interest in and to the ’376 Patent, including the right to assert all causes of action arising under the ’376 Patent and the right to any remedies for infringement.

9. On February 11, 1997, United States Patent No. 5,603,054 (the “’054 Patent”), entitled “Method For Triggering Selected Machine Event When The Triggering Conditions Of An Identified User Are Perceived,” was duly and legally issued by the United States Patent and

Trademark Office. A true and correct copy of the '054 Patent is attached as Exhibit B to this Complaint.

10. UbiComm is the assignee and owner of the right, title and interest in and to the '054 Patent, including the right to assert all causes of action arising under the '054 Patent and the right to any remedies for infringement.

11. On March 11, 1997, United States Patent No. 5,611,050 (the "'050 Patent"), entitled "Method For Selectively Performing Event On Computer Controlled Device Whose Location And Allowable Operation Is Consistent With The Contextual And Locational Attributes Of The Event," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '050 Patent is attached as Exhibit C to this Complaint.

12. UbiComm is the assignee and owner of the right, title and interest in and to the '050 Patent, including the right to assert all causes of action arising under the '050 Patent and the right to any remedies for infringement.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,555,376

13. The allegations set forth in the foregoing paragraphs 1 through 12 are hereby realleged and incorporated herein by reference.

14. In violation of 35 U.S.C. § 271(a) and without license or authorization, Dell has directly infringed, and continues to directly infringe, at least Claim 1 of the '376 Patent both literally and under the doctrine of equivalents. Dell's direct infringement includes the use, testing and operation (the "'376 Patent Direct Accused Activities"), in the United States, including within this Judicial District, of its secure printing document output management technology, including the Dell Secure Mobile Print Release, when connected to, installed with or operated with a printer network, and the context- and location-aware management technology,

including the Dell Mobile Clinical Computing Solution, when connected to, installed with or operated with a computer and/or printer network (the “’376 Patent Accused Products”).

15. The ’376 Patent Direct Accused Activities include using, testing and operating the secure printing document output management technology, including the Secure Mobile Print Release, and the context- and location-aware management technology, including the Dell Mobile Clinical Computing Solution, on Dell’s own or on a customer’s computer network system and/or printers. The infringing methods include the method of operating the secure printing document output management technology on a computer system that includes printers and the method of operating the context- and location-aware management technology on a computer system that includes printers. The ’376 Patent Accused Products include software that is capable of performing and/or implementing the secure printing output management technology, including Dell’s Secure Mobile Print Release and any affiliated devices, and software that is capable of performing and/or implementing the context- and location-aware management technology, including the Dell Mobile Clinical Computing Solution and any affiliated devices.

16. UbiComm provided actual notice to Dell of their infringement of the ’376 Patent in letters sent by Federal Express on May 16, 2013 and June 10, 2013. In those letters, UbiComm informed Dell that it was infringing the ’376 Patent by making, using, selling, offering to sell, and/or importing the Dell Secure Mobile Print Release and the Dell Mobile Clinical Computing Solution. UbiComm’s letters also informed Dell that Dell was inducing infringement of the ’376 Patent by the sale, marketing and advertising of the ’376 Patent Accused Products, as well as by allowing, encouraging, and training their partners, customers and end users to use the infringing products and services. UbiComm’s letters also informed Dell that Dell was contributing to infringement of the ’376 Patent by selling and offering for sale the

'376 Patent Accused Products. With respect to both induced and contributory infringement, UbiComm's letters informed Dell that the direct infringers were Dell's partners and customers.

17. Dell has had actual knowledge of the '376 Patent and Dell's infringement of that patent since at least the date that Dell received the May 16, 2013 and June 10, 2013 letters.

18. Upon information and belief, Dell has committed and continues to commit acts of contributory infringement of at least claim 1 of the '376 Patent under 35 U.S.C. § 271(c) by offering to sell and selling products, including the '376 Patent Accused Products, to others including their partners and customers, knowing or willfully blind to the fact that these products constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '376 Patent, and have no substantial non-infringing uses.

19. In particular, the using, testing and operating of the '376 Patent Accused Products constitute a material part of the claimed invention at least because they implement the secure printing document output management feature and the context- and location-aware management feature which are used by Dell's partners and customers to perform all of the steps recited in claim 1 of the '376 Patent. The '376 Patent Accused Products were made or especially adapted for use in an infringement of the '376 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to practice the claimed method of secure printing document output management or context- and location-aware management as recited in claim 1 of the '376 Patent. The use, testing, and operating of the secure printing document output management or context- and location-aware management features in such products by Dell's customers constitutes direct infringement of at least claim 1 of the '376 Patent. Defendant has known or remained willfully blind to these facts since at least the date it received a notice letter from UbiComm notifying Dell that the use of the secure printing

document output management feature or context- and location-aware management in the '376 Patent Accused Products infringed the '376 Patent.

20. Upon information and belief, Dell has induced and continues to induce others to infringe at least claim 1 of the '376 Patent under 35 U.S.C. § 271(b) by making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '376 Patent Accused Products (the “'376 Patent Indirect Accused Activities”).

21. The '376 Patent Indirect Accused Activities include, among other things, making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '376 Patent Accused Products, as well as actively aiding and abetting others to infringe, including, but not limited to, Dell's partners and customers whose use, testing, and operating of the '376 Patent Accused Products and performance of the '376 Patent Direct Accused Activities constitutes direct infringement of at least claim 1 of the '376 Patent. In particular, Dell's actions that aid and abet others such as their partners and customers to infringe include advertising, marketing, and distributing the '376 Patent Accused Products and providing instruction materials and training regarding the '376 Patent Accused Products and '376 Patent Accused Activities. On information and belief, Dell has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Dell has had actual knowledge of the '376 Patent and that its acts were inducing its partners and customers to infringe the '376 Patent since at least the date it received the notice letters from UbiComm notifying Dell that the secure printing document output management feature in the '376 Patent Accused Products infringed the '376 Patent.

22. UbiComm notified Dell of their infringement of the '376 Patent including an identification of the particular infringing products and features, but Dell thereafter continued to

infringe the '376 Patent by continuing the activities described in Paragraphs 14-22 above. On information and belief, Dell's infringement has been and continues to be willful.

23. Because of Dell's infringement of the '376 Patent, UbiComm has suffered damages and will continue to suffer damages in the future.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 5,603,054

24. The allegations set forth in the foregoing paragraphs 1 through 23 are hereby realleged and incorporated herein by reference.

25. In violation of 35 U.S.C. § 271(a) and without license or authorization, Dell has directly infringed, and continues to directly infringe, at least Claim 1 of the '054 Patent both literally and under the doctrine of equivalents. Dell's direct infringement includes the use, testing and operation (the "'054 Patent Direct Accused Activities"), in the United States, including within this Judicial District, of its secure printing document output management technology, including the Dell Secure Mobile Print Release, when connected to, installed with or operated with a printer network, and the context- and location-aware management technology, including the Dell Mobile Clinical Computing Solution, when connected to, installed with or operated with a computer and/or printer network (the "'054 Patent Accused Products").

26. The '054 Patent Direct Accused Activities include using, testing and operating the secure printing document output management technology, including the Secure Mobile Print Release, and the context- and location-aware management technology, including the Dell Mobile Clinical Computing Solution, on Dell's own or on a customer's computer network system and/or printers. The infringing methods include the method of operating the secure printing document output management technology on a computer system that includes printers and the method of operating the context- and location-aware management technology on a computer system that

includes printers. The '054 Patent Accused Products include software that is capable of performing and/or implementing the secure printing output management technology, including Dell's Secure Mobile Print Release and any affiliated devices, and software that is capable of performing and/or implementing the context- and location-aware management technology, including the Dell Mobile Clinical Computing Solution and any affiliated devices.

27. UbiComm provided actual notice to Dell of their infringement of the '054 Patent in letters sent by Federal Express on May 16, 2013 and June 10, 2013. In those letters, UbiComm informed Dell that it was infringing the '054 Patent by making, using, selling, offering to sell, and/or importing the Dell Secure Mobile Print Release and the Dell Mobile Clinical Computing Solution. UbiComm's letters also informed Dell that Dell was inducing infringement of the '054 Patent by the sale, marketing and advertising of the '054 Patent Accused Products, as well as by allowing, encouraging, and training their partners, customers and end users to use the infringing products and services. UbiComm's letters also informed Dell that Dell was contributing to infringement of the '054 Patent by selling and offering for sale the '054 Patent Accused Products. With respect to both induced and contributory infringement, UbiComm's letters informed Dell that the direct infringers were Dell's partners and customers.

28. Dell has had actual knowledge of the '054 Patent and Dell's infringement of that patent since at least the date that Dell received the May 16, 2013 and June 10, 2013 letters.

29. Upon information and belief, Dell has committed and continues to commit acts of contributory infringement of at least claim 1 of the '054 Patent under 35 U.S.C. § 271(c) by offering to sell and selling products, including the '054 Patent Accused Products, to others including their partners and customers, knowing or willfully blind to the fact that these products

constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '054 Patent, and have no substantial non-infringing uses.

30. In particular, the using, testing and operating of the '054 Patent Accused Products constitute a material part of the claimed invention at least because they implement the secure printing document output management feature and the context- and location-aware management feature which are used by Dell's partners and customers to perform all of the steps recited in claim 1 of the '054 Patent. The '054 Patent Accused Products were made or especially adapted for use in an infringement of the '054 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to practice the claimed method of secure printing document output management or context- and location-aware management as recited in claim 1 of the '054 Patent. The use, testing, and operating of the secure printing document output management or context- and location-aware management features in such products by Dell's customers constitutes direct infringement of at least claim 1 of the '054 Patent. Defendant has known or remained willfully blind to these facts since at least the date it received a notice letter from UbiComm notifying Dell that the use of the secure printing document output management feature or context- and location-aware management in the '054 Patent Accused Products infringed the '054 Patent.

31. Upon information and belief, Dell has induced and continues to induce others to infringe at least claim 1 of the '054 Patent under 35 U.S.C. § 271(b) by making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '054 Patent Accused Products (the "'054 Patent Indirect Accused Activities").

32. The '054 Patent Indirect Accused Activities include, among other things, making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and

offering for sale the '054 Patent Accused Products, as well as actively aiding and abetting others to infringe, including, but not limited to, Dell's partners and customers whose use, testing, and operating of the '054 Patent Accused Products and performance of the '054 Patent Direct Accused Activities constitutes direct infringement of at least claim 1 of the '054 Patent. In particular, Dell's actions that aid and abet others such as their partners and customers to infringe include advertising, marketing, and distributing the '054 Patent Accused Products and providing instruction materials and training regarding the '054 Patent Accused Products and '054 Patent Accused Activities. On information and belief, Dell has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Dell has had actual knowledge of the '054 Patent and that its acts were inducing its partners and customers to infringe the '054 Patent since at least the date it received the notice letters from UbiComm notifying Dell that the secure printing document output management feature in the '054 Patent Accused Products infringed the '054 Patent.

33. UbiComm notified Dell of their infringement of the '054 Patent including an identification of the particular infringing products and features, but Dell thereafter continued to infringe the '054 Patent by continuing the activities described in Paragraphs 14-32 above. On information and belief, Dell's infringement has been and continues to be willful.

34. Because of Dell's infringement of the '054 Patent, UbiComm has suffered damages and will continue to suffer damages in the future.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 5,611,050

35. The allegations set forth in the foregoing paragraphs 1 through 35 are hereby realleged and incorporated herein by reference.

36. In violation of 35 U.S.C. § 271(a) and without license or authorization, Dell has directly infringed, and continues to directly infringe, at least Claim 1 of the '050 Patent both literally and under the doctrine of equivalents. Dell's direct infringement includes the use, testing and operation (the "'050 Patent Direct Accused Activities"), in the United States, including within this Judicial District, of its secure printing document output management technology, including the Dell Secure Mobile Print Release, when connected to, installed with or operated with a printer network, and the context- and location-aware management technology, including the Dell Mobile Clinical Computing Solution, when connected to, installed with or operated with a computer and/or printer network (the "'050 Patent Accused Products").

37. The '050 Patent Direct Accused Activities include using, testing and operating the secure printing document output management technology, including the Secure Mobile Print Release, and the context- and location-aware management technology, including the Dell Mobile Clinical Computing Solution, on Dell's own or on a customer's computer network system and/or printers. The infringing methods include the method of operating the secure printing document output management technology on a computer system that includes printers and the method of operating the context- and location-aware management technology on a computer system that includes printers. The '050 Patent Accused Products include software that is capable of performing and/or implementing the secure printing output management technology, including Dell's Secure Mobile Print Release and any affiliated devices, and software that is capable of performing and/or implementing the context- and location-aware management technology, including the Dell Mobile Clinical Computing Solution and any affiliated devices.

38. UbiComm provided actual notice to Dell of their infringement of the '050 Patent in letters sent by Federal Express on May 16, 2013 and June 10, 2013. In those letters,

UbiComm informed Dell that it was infringing the '050 Patent by making, using, selling, offering to sell, and/or importing the Dell Secure Mobile Print Release and the Dell Mobile Clinical Computing Solution. UbiComm's letters also informed Dell that Dell was inducing infringement of the '050 Patent by the sale, marketing and advertising of the '050 Patent Accused Products, as well as by allowing, encouraging, and training their partners, customers and end users to use the infringing products and services. UbiComm's letters also informed Dell that Dell was contributing to infringement of the '050 Patent by selling and offering for sale the '050 Patent Accused Products. With respect to both induced and contributory infringement, UbiComm's letters informed Dell that the direct infringers were Dell's partners and customers.

39. Dell has had actual knowledge of the '050 Patent and Dell's infringement of that patent since at least the date that Dell received the May 16, 2013 and June 10, 2013 letters.

40. Upon information and belief, Dell has committed and continues to commit acts of contributory infringement of at least claim 1 of the '050 Patent under 35 U.S.C. § 271(c) by offering to sell and selling products, including the '050 Patent Accused Products, to others including their partners and customers, knowing or willfully blind to the fact that these products constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '050 Patent, and have no substantial non-infringing uses.

41. In particular, the using, testing and operating of the '050 Patent Accused Products constitute a material part of the claimed invention at least because they implement the secure printing document output management feature and the context- and location-aware management feature which are used by Dell's partners and customers to perform all of the steps recited in claim 1 of the '050 Patent. The '050 Patent Accused Products were made or especially adapted for use in an infringement of the '050 Patent and have no substantial non-infringing uses at least

because they contain components whose only purpose is to practice the claimed method of secure printing document output management or context- and location-aware management as recited in claim 1 of the '050 Patent. The use, testing, and operating of the secure printing document output management or context- and location-aware management features in such products by Dell's customers constitutes direct infringement of at least claim 1 of the '050 Patent. Defendant has known or remained willfully blind to these facts since at least the date it received a notice letter from UbiComm notifying Dell that the use of the secure printing document output management feature or context- and location-aware management in the '050 Patent Accused Products infringed the '050 Patent.

42. Upon information and belief, Dell has induced and continues to induce others to infringe at least claim 1 of the '050 Patent under 35 U.S.C. § 271(b) by making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '050 Patent Accused Products (the "'050 Patent Indirect Accused Activities").

43. The '376 Patent Indirect Accused Activities include, among other things, making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '050 Patent Accused Products, as well as actively aiding and abetting others to infringe, including, but not limited to, Dell's partners and customers whose use, testing, and operating of the '050 Patent Accused Products and performance of the '050 Patent Direct Accused Activities constitutes direct infringement of at least claim 1 of the '050 Patent. In particular, Dell's actions that aid and abet others such as their partners and customers to infringe include advertising, marketing, and distributing the '050 Patent Accused Products and providing instruction materials and training regarding the '050 Patent Accused Products and '050 Patent Accused Activities. On information and belief, Dell has engaged in such actions with specific

intent to cause infringement or with willful blindness to the resulting infringement because Dell has had actual knowledge of the '050 Patent and that its acts were inducing its partners and customers to infringe the '050 Patent since at least the date it received the notice letters from UbiComm notifying Dell that the secure printing document output management feature in the '050 Patent Accused Products infringed the '050 Patent.

44. UbiComm notified Dell of their infringement of the '050 Patent including an identification of the particular infringing products and features, but Dell thereafter continued to infringe the '050 Patent by continuing the activities described in Paragraphs 35-43 above. On information and belief, Dell's infringement has been and continues to be willful.

45. Because of Dell's infringement of the '050 Patent, UbiComm has suffered damages and will continue to suffer damages in the future.

JURY DEMAND

46. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, UbiComm demands a trial by jury on all issues and claims triable as such.

PRAYER FOR RELIEF

WHEREFORE, UbiComm respectfully demands judgment for itself and against Defendant as follows:

A. An adjudication that Dell has infringed the claims of the '376, '054, and '050 Patents;

B. An award of damages to be paid by Dell adequate to compensate UbiComm for its past infringement of the '376, '054, and '050 Patents, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. An injunction ordering Dell to pay an ongoing royalty in an amount to be determined for any continued infringement after the date judgment is entered;

D. An award of treble damages under 35 U.S.C. § 284;

E. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of UbiComm's reasonable attorneys' fees; and

F. An award to UbiComm of such further relief at law or in equity as the Court deems just and proper.

Respectfully submitted,

Dated: June 28, 2013

STAMOULIS & WEINBLATT LLC

/s/ Stamatios Stamoulis

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