

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CASCADES COMPUTER
INNOVATION, LLC.,

Plaintiff,

v.

DELL INC.,

Defendant.

Civil Action No. 11 C 7264

Honorable Matthew Kennelly

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Pursuant to Federal Rule of Civil Procedure 15(a), Plaintiff, Cascades Computer Innovation, LLC ("Cascades"), files this Amended Complaint and alleges the following:

NATURE OF THE SUIT

1. This is a suit for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1 et seq. This Court has exclusive jurisdiction over the subject matter of this Complaint under 28 U.S.C. § 1338(a).

PARTIES

2. Cascades is an Illinois limited liability company having its principal place of business at 500 Skokie Boulevard, Suite 350, Northbrook, IL 60062.

3. Defendant Dell Inc. ("Dell") is a Delaware corporation having offices located at 1 Dell Way, Round Rock, Texas, United States.

4. Cascades' claim for patent infringement against Defendant arises under the patent laws of the United States, including 35 U.S.C. §§271 and 281. Consequently, this Court has original subject matter jurisdiction over this suit pursuant to 28 U.S.C. §§1331 and 1338.

5. Dell sells products throughout the United States and conducts substantial business in this judicial district, including providing the products accused of infringement in this judicial district. Dell makes, uses, sells, offers for sale and/or imports into the United States wireless portable communication devices including, specifically, cellular telephones and computer tablets that use the Android operating system and software.

6. Dell is subject to both specific and general personal jurisdiction of this Court because, among other things, it has established continuous and systematic contacts with Illinois and in this judicial district; it has committed acts within Illinois and this judicial district giving rise to this action, and it has minimum contacts with the forum such that the exercise of jurisdiction over it would not offend traditional notions of fair play and substantial justice. As an example, Dell has established distribution networks placing products that are covered by claims of Cascades' '750 patent into the stream of commerce such that those products flow into Illinois and this district. Dell has also committed acts of patent infringement and/or contributed to others' acts of patent infringement within this district.

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

PATENT AT ISSUE

8. On June 20, 2006, United States Patent No. 7,065,750 (the "'750 patent"), entitled "Method and Apparatus for Preserving Precise Exceptions in Binary Translated Code," was duly and legally issued by the United States Patent and Trademark Office. Cascades has the exclusive license under and the exclusive right to sue for past, present and future infringement of the '750 patent.

9. Dell is now and has been infringing and/or contributorily infringing the '750 patent, literally and under the doctrine of equivalents, by, among other things, using, offering to sell, selling, re-selling and/or importing products that are covered by one or more claims of the '750 patent. Dell has directly infringed through use of the claimed invention publicly and repeatedly by its employees, as well as in non-public settings within Dell. Infringing products include, but are not limited to, cell phone products such as its Dell Venue smartphones and computers, such as its Streak 7 Tablets. An illustrative claim chart demonstrating how Dell and its customers practice at least the method of claim 15 of the '750 patent using the Dell Venue smartphone with its Android operating system and software is attached as Exhibit A. Other Dell products used by Dell employees and customers that use the Android operating system and software infringe in the same way. In fact, Dell openly admits use in its publicly available website:

Dell and T-Mobile USA Unveil Streak 7, Both Companies' First 4G Tablet Offering the Ultimate Entertainment Experience

LAS VEGAS, Jan. 6 – Today at 2011 International CES, [Dell](#) and [T-Mobile](#) USA, Inc. unveiled Dell's new 7-inch Android™ tablet, the [Streak™ 7](#), both companies' first 4G* capable tablet specifically designed for the super-fast mobile broadband speeds of T-Mobile's 4G network. The sleek compact form of the Streak 7 combined with T-Mobile's super-fast 4G mobile broadband network make it the ultimate entertainment hub for families and consumers craving a rich multimedia and web experience both at home and on-the-go.

Portable, passable and easily shared, the Streak 7's brilliant seven-inch WVGA touch screen with [Gorilla®](#) Glass is ideal for Web browsing, streaming video, watching TV and movies, reading books and magazines or playing games virtually anytime, anywhere. The Streak 7 features Google's™ Android 2.2 operating system, a dual core 1GHz NVIDIA [Tegra](#) 2 processor and full support for Adobe® Flash® Player. Preloaded with a variety of compelling content and applications from T-Mobile, the Android-powered tablet also has access to more than 100,000 applications, games and widgets from [Android Market™](#).

<http://content.dell.com/us/en/corp/d/press-releases/2011-01-06-streak7>.

Dell's announcement included an actual demonstration of its Streak tablet (See, e.g., <http://allthingsd.com/20100602/dell-demo/>, showing Dell's Ron Garriques using the Dell Streak) and infringement occurs through use in the manner described in Exhibit A. In advance of that demonstration, Dell's Michael Dell demonstrated his use of the Dell Streak 7 during his Keynote Presentation at the September 2010 Oracle Open world Conference (<http://www.youtube.com/watch?v=yloX-grlZz4>).

10. Further, Dell is a contributory infringer of the '750 patent because it knew at least when the original complaint was filed and, thus, knew then (and now knows) that the steps of the claimed method described in claim 15, for example, were carried out by users of Dell's phones, such as the Venue smartphone, as well as its tablets that employ Android operating systems and software. Direct infringement by customer/end-users is illustrated in the attached Exhibit A. Dell's customers are direct infringers and Dell contributes to their infringement in that Dell's customers carry out each and every step of the method defined, for example, in claim 15, as illustrated in the claim chart Exhibit A. Dell is fully aware of such direct infringement and encourages, aids and assists it. Dell also knows there are no substantial non-infringing uses of the accused products and Dell knows its phones and tablets using the Android operating system and software are especially designed and made to use the Android operating system and software and, thus, are designed to practice, for example, the method of claim 15 of the '750 patent. Dell knows this occurs when a Dell customer/end-user operates a phone or tablet in the manner Dell directs, instructs and teaches.

11. Dell does more than simply sell products that use the Android operating system. It directs customers to use and shows them how to use the Android operating

system and, thus, facilitates such use. Dell's customers, in turn, actually use the identified cell phones and tablets to carry out each step of method claim 15, which is an act of direct infringement. The conditions of such use are known to Dell and set forth in Exhibit A. Specifically, use of the method occurs when the phone or tablet is turned on and made functional. When the Android operating system starts up, the Delvik virtual machine in the phone or tablet looks through the applications installed on the phone or tablet and builds a tree of dependencies. This dependency tree optimizes the byte code for every application and stores it in the Delvik cache. The applications are then run using the optimized byte code. Dell is fully aware that its phones and tablets using Android operating systems are designed to operate and do, in fact, operate in this way. The claimed method is performed when a user of the cellular phones or tablets operates the device for their intended purpose using the Android operating system, e.g., allowing the Delvik virtual machine to optimize the byte code for each application.

12. Further, Dell's manufacture, sale, offer to sell and importation of the identified cell phones and tablets is direct infringement of apparatus/system claim 1, for example, in that the Venue smartphone and Streak 7 Tablets made and sold by Dell include each element of claim 1, including a non-optimizing foreign code execution module, an optimizing binary translator, a host CPU, a documentation tracker and a recovery mechanism, all as required by claim 1.

13. Dell makes the Venue cellular telephone.

14. Dell's Venue phone includes both hardware and software components.

15. Dell imports, sells, and offers to sell the Venue phone to customers in the United States.

16. Dell customers use the Venue phones in the United States.

17. The Dell Venue phone:

- a. includes a binary translation system.
- b. includes an optimizing translator.
- c. includes a binary translated code translated from foreign code.
- d. designates a set of recovery points in the optimized binary translated code during optimized translation of the foreign code.
- e. generates a set of documentations during the optimized translation of the foreign code.

18. The Dell Venue phone uses one of the documentations in the set of documentations corresponding to executed optimized binary translated code when an exception arises during its execution to recover a foreign state corresponding to a recovery point for the exception.

19. The Dell Venue:

- a. includes a non-optimizing foreign code execution module.
- b. includes a non-optimizing foreign code execution module dedicated to foreign state for each binary operation executed.
- c. includes an optimizing binary translator.
- d. includes a binary translator configured to translate foreign binary operations into optimized sequences of host operations.
- e. includes a host CPU.
- f. includes a host CPU configured to execute host operations.
- g. includes a host CPU to execute the host operations.
- h. includes a documentation generator.

- i. includes a document generator configured to generate a set of documentations for optimized sequences of host operations.
 - j. includes a documentation tracker.
 - k. includes a documentation tracker configured to record host operation addresses at appointed points of the host operation sequences being executed.
 - l. includes a recovery mechanism.
 - m. includes a recovery mechanism configured to select a documentation in the set of documentations using a host operation address corresponding to the selected documentation.
20. Dell makes the Streak 7 Tablet.
21. Dell's Streak 7 Tablet includes both hardware and software components.
22. Dell imports, sells, and offers to sell the Streak 7 Tablet to customers in the United States.
23. Dell customers use the Streak 7 Tablets in the United States.
24. The Streak 7 Tablet phone:
- a. includes a binary translation system.
 - b. includes an optimizing translator.
 - c. includes a binary translated code translated from foreign code.
 - d. designates a set of recovery points in the optimized binary translated code during optimized translation of the foreign code.
 - e. generates a set of documentations during the optimized translation of the foreign code.

25. The Dell Streak 7 Tablet uses one of the documentations in the set of documentations corresponding to executed optimized binary translated code when an exception arises during its execution to recover a foreign state corresponding to a recovery point for the exception.

26. The Dell Streak 7:

- a. includes a non-optimizing foreign code execution module.
- b. includes a non-optimizing foreign code execution module dedicated to foreign state for each binary operation executed.
- c. includes an optimizing binary translator.
- d. includes a binary translator configured to translate foreign binary operations into optimized sequences of host operations.
- e. includes a host CPU.
- f. includes a host CPU configured to execute host operations.
- g. includes a host CPU to execute the host operations.
- h. includes a documentation generator.
- i. includes a document generator configured to generate a set of documentations for optimized sequences of host operations.
- j. includes a documentation tracker.
- k. includes a documentation tracker configured to record host operation addresses at appointed points of the host operation sequences being executed.
- l. includes a recovery mechanism.

m. includes a recovery mechanism configured to select a documentation in the set of documentations using a host operation address corresponding to the selected documentation.

27. Cascades has been and continues to be damaged by Dell's actions.

PRAYER FOR RELIEF

WHEREFORE, Cascades prays for the following relief:

A. A judgment finding Dell has infringed and contributorily infringed the '750 patent;

B. A judgment that the '750 patent is valid and enforceable;

C. A permanent injunction enjoining Dell, its agents, officers, assigns and others acting in concert with them, from infringing, inducing infringement of, and/or contributing to infringement of the '750 patent;

D. An award of damages adequate to compensate Cascades for the infringement of the '750 patent that has occurred;

E. An award of pre-judgment interest and post-judgment interest on the damages awarded;

F. A determination that this is an exceptional case and an award of Cascades' attorneys' fees pursuant to 35 U.S.C. § 285 and any other applicable statute or law, and an award to Cascades of its costs; and,

G. Such other relief as the Court deems equitable under the circumstances.

JURY DEMAND

Plaintiff demands a trial by jury on all issues triable to a jury.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 17, 2012 the foregoing **SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT** was filed electronically with the Clerk of the Court for the Northern District of Illinois using the Court's Electronic Case Filing System, which will send notification to the registered participants of the ECF System as listed in the Court's Notice of Electronic Filing.

I certify that all parties in this case are represented by counsel who are CM/ECF participants.

/s/ Raymond P. Niro
Attorneys for Cascades Computer Innovation,
LLC