

1 SEAN C. CUNNINGHAM (Bar No. 174931)
sean.cunningham@dlapiper.com
2 ERIN P. GIBSON (Bar No. 229305)
erin.gibson@dlapiper.com
3 JACOB D. ANDERSON (Bar No. 265768)
jacob.anderson@dlapiper.com
4 DLA PIPER LLP (US)
401 B Street, Suite 1700
5 San Diego, CA 92101-4297
Tel: 619.699.2700
6 Fax: 619.699.2701

7 BRENT K. YAMASHITA (Bar No. 206890)
brent.yamashita@dlapiper.com
8 ROBERT BUERGI (Bar No. 242910)
robert.buergi@dlapiper.com
9 SUMMER KRAUSE (Bar No. 264858)
summer.krause@dlapiper.com
10 DLA PIPER LLP (US)
2000 University Avenue
11 East Palo Alto, CA 94303-2215
Tel: 650.833.2000
12 Fax: 650.833.2001

13 Attorneys for Plaintiff
OVERLAND STORAGE, INC.

14
15 UNITED STATES DISTRICT COURT
16 SOUTHERN DISTRICT OF CALIFORNIA

17 OVERLAND STORAGE, INC.,

18 Plaintiff,

19 v.

20 SPECTRA LOGIC CORPORATION,

21 Defendant.
22

Case No. **'12CV1597 BTM KSC**

**PLAINTIFF OVERLAND STORAGE,
INC.'S COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

23
24 Plaintiff Overland Storage, Inc. ("Overland Storage"), by and through its undersigned
25 attorneys, complains and alleges against Defendant Spectra Logic Corporation ("Spectra Logic")
26 as follows:

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NATURE OF THE ACTION

1. This is a civil action for infringement of United States Patent Nos. 6,328,766 and 6,353,581. This action arises under the laws of the United States relating to patents, including 35 U.S.C. § 281.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) and pursuant to the patent laws of the United States of America, 35 U.S.C. § 101, *et seq.*

3. Venue properly lies within the Southern District of California pursuant to the provisions of 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b). On information and belief, Spectra Logic conducts substantial business directly and/or through third parties or agents in this judicial district by selling and/or offering to sell the infringing products, including media libraries, systems and components, and/or by conducting other business in this judicial district. Furthermore, Plaintiff Overland Storage is headquartered and has its principal place of business in this district, sells competing media libraries and systems in this district, and has been harmed by Spectra Logic’s conduct, business transactions and sales in this district.

4. This Court has personal jurisdiction over Spectra Logic because Spectra Logic transacts continuous and systematic business within the State of California and the Southern District of California. In addition, this Court has personal jurisdiction over Spectra Logic because, on information and belief, this lawsuit arises out of Spectra Logic’s infringing activities, including without limitation Spectra Logic’s making, using, selling and/or offering to sell infringing products in the State of California and the Southern District of California. Finally, this Court has personal jurisdiction over Spectra Logic because, on information and belief, Spectra Logic has made, used, sold and/or offered for sale its infringing products and placed such infringing products in the stream of interstate commerce with the expectation that such infringing products would be made, used, sold and/or offered for sale within the State of California and the Southern District of California.

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THE PARTIES

1
2 5. Plaintiff Overland Storage is a California corporation with its headquarters and
3 principal place of business at 9112 Spectrum Center Boulevard, San Diego, California 92123.

4 6. On information and belief, Defendant Spectra Logic is a Delaware corporation
5 with its principal place of business at 6285 Lookout Road, Boulder, CO 80301-3580.

THE ASSERTED PATENTS

7 7. On December 11, 2001, United States Patent No. 6,328,766 (“the ’766 patent”),
8 entitled “Media Element Library with Non-Overlapping Subset of Media Elements and Non-
9 Overlapping Subset of Media Element Drives Accessible to First Host and Unaccessible to
10 Second Host,” was duly and legally issued by the United States Patent and Trademark Office.
11 The named inventor is Robert M. Long. Overland Storage is the assignee and owner of the entire
12 right, title and interest in and to the ’766 patent and has the right to bring this suit for damages
13 and other relief. A true and correct copy of the ’766 patent is attached as Exhibit A.

14 8. The ’766 patent teaches an innovative data storage system containing a plurality of
15 media elements, in which each media element may be a member of one of a plurality of sets of
16 media elements, and a controller configured so that a subset of media elements and media
17 element drives are available for read/write access by one set of host computers, but are
18 unavailable for read/write access by another set of host computers. The patent also discloses
19 methods where host computers can store and retrieve data to and from separate portions of the
20 media library without interfering with one another.

21 9. On March 5, 2002, United States Patent No. 6,353,581 (“the ’581 patent”), entitled
22 “Media Access in a Media Library,” was duly and legally issued by the United States Patent and
23 Trademark Office. The named inventors are Karl B. Offerman and Kevin T. Kersey. Overland
24 Storage is the assignee and owner of the entire right, title and interest in and to the ’581 patent
25 and has the right to bring this suit for damages and other relief. A true and correct copy of the
26 ’581 patent is attached as Exhibit B.

27 10. The ’581 patent teaches an innovative automated media library and retrieval
28 system where a user can easily insert or remove storage media, such as magnetic tapes, through a

1 mail slot without having to remove the magazine of media elements, without requiring
2 complicated transport mechanisms, and without limiting system options for media access
3 security. The patent also discloses methods of moving a particular storage medium contained in
4 the media library from a readable location to a manually accessible location.

5 **BACKGROUND**

6 11. A company's data is one of its most critical assets. Businesses must retain data for
7 extended periods of time to comply with regulatory requirements, conduct internal audits and
8 ensure best practices. Keeping data stored, accessible, and secure has become increasingly
9 complex and expensive as companies are faced with massive data growth, increasingly stringent
10 regulatory requirements and distributed environments that can range from across the hall to across
11 the globe. As companies' data storage needs have increased from megabytes to gigabytes to
12 terabytes, automated media libraries have become vital. Automated media libraries allow users to
13 store digital data in a central location, then search for and retrieve that data from networked
14 computers when necessary. This data can be stored on a variety of storage media within the
15 library, including disks or magnetic tapes.

16 12. Compact, high capacity, low-cost data management systems are common today
17 among businesses, but it was not always that way. Prior data management solutions required
18 cabinet and even room-sized systems, and often could be connected to only a single host
19 computer at any given time. Also, prior data management solutions often imposed unacceptably
20 long periods of downtime in cases where individual files and directories needed to be quickly
21 restored. These cumbersome, expensive and inefficient systems were being outpaced by the high
22 performance data storage demands of businesses.

23 13. Overland Storage's patented data management and data protection solutions
24 addressed these challenges. These patented technologies encompass both the apparatus that
25 houses the media library and the methods of storing and retrieving that data from host computers.
26 Using Overland Storage's technologies, customers can create network-based, virtual media
27 libraries to maintain data for continuous local backup and remote disaster recovery, or to store
28 data for long-term archiving and compliance requirements. The result is that these cutting-edge

1 products provide a more cost-effective way of keeping customers' data stored, accessible and
2 secure.

3 14. Overland Storage has been granted a number of patents relating to its innovative
4 data management and protection systems. In the 1990s, Overland Storage marketed the first
5 scalable automated media library solution that eliminated the physical limitations of conventional
6 tape library designs. Overland Storage has continued to improve on its media library technology
7 and has marketed product line families including but not limited to its SnapServer, Ultimius
8 RAID, ARCvault, NEO Series Tape Libraries, and REO Series Virtual Tape Libraries.

9 15. Following Overland Storage's introduction of its patent-protected media libraries
10 into the market, Spectra Logic began making, offering for sale, and/or selling media libraries that
11 use Overland Storage's patented technology.

12 16. Spectra Logic manufactures and sells automated tape libraries in the United States,
13 including but not limited to the Spectra T-Finity Library, the Spectra T950 Library, the Spectra
14 T680 Library, the Spectra T380 Library, the Spectra T200 Library, the Spectra T120 Library and
15 the Spectra T50e Library. Spectra Logic states that its tape libraries "will lower storage
16 management costs, reduce risk, and protect your investment." On information and belief, the
17 Spectra Logic accused products consist of automated media libraries with one or more tape drives
18 and more than two tape cartridges, which are integrated in a rack configuration or a free-standing
19 floor unit. The Spectra Logic accused products are able to move tape cartridges from one drive to
20 another without human intervention through actuators that reside inside the media library.

21 17. On information and belief, Spectra Logic has made, used, sold, offered for sale
22 and/or imported accused products that practice the claims of the '766 and '581 patents, as set
23 forth more fully below.

24 **COUNT ONE**

25 **Infringement of the '766 Patent by Spectra Logic**

26 18. Overland Storage incorporates by reference each of the allegations set forth above.

27 19. On information and belief, Spectra Logic, without authority, has directly infringed
28 and continues to directly infringe, under 35 U.S.C. § 271(a), the '766 patent by making, using,

1 offering to sell, or selling within the United States, or importing into the United States, the
2 accused products, including but not limited to the Spectra T-Finity Library, the Spectra T950
3 Library, the Spectra T680 Library, the Spectra T380 Library, the Spectra T200 Library, the
4 Spectra T120 Library and the Spectra T50e Library. The accused products, alone or in
5 combination with other products, practice each of the limitations of independent claims 1, 2 and
6 10 and dependent claims 3, 4, 5, 7, 8 and 9 of the '766 patent.

7 20. On information and belief, Spectra Logic, without authority, has actively induced
8 and continues to actively induce infringement by others, under 35 U.S.C. § 271(b), by
9 intentionally causing others to directly infringe the claims of the '766 patent and/or by
10 intentionally instructing others how to use the accused products in a manner that infringes the
11 claims of the '766 patent. On information and belief, Spectra Logic has induced and continues to
12 induce infringement by instructing customers to operate the products in an infringing manner
13 and/or when Spectra Logic performs quality assurance testing or otherwise operates the accused
14 products in the United States. For example, the user manual provided with the Spectra T950
15 Library, which is representative of the accused products, explains how to perform virtual
16 partitioning of a media library in a manner that infringes the claims of the '766 patent.
17 (<http://www.spectralogic.com/index.cfm?fuseaction=home.displayFile&DocID=283>).

18 21. On information and belief, Spectra Logic, without authority, has contributorily
19 infringed and continues to contributorily infringe, under 35 U.S.C. § 271(c), by importing into the
20 United States, selling and/or offering to sell within the United States accused products that
21 (1) constitute a material part of the invention of the '766 patent, (2) Spectra Logic knows to be
22 especially adapted for use in infringing the '766 patent, and (3) are not staple articles of
23 commerce suitable for substantial noninfringing use with respect to the '766 patent. On
24 information and belief, Spectra Logic ships the accused products with all the features required to
25 infringe the asserted claims of the '766 patent. On information and belief, these products are
26 designed to implement the infringing features, and the default settings of the accused products, as
27 shipped, are set accordingly.

1 22. Spectra Logic had actual notice of its infringement of the '766 patent before the
2 filing of this complaint. In or around May 2011, Overland Storage served subpoenas on Spectra
3 Logic relating to Spectra Logic's sale of tape libraries that practice the '766 patent. The '766
4 patent was expressly identified in those subpoenas. In response, Spectra Logic stated that it
5 would only comply with Overland Storage's subpoenas if Overland Storage would agree to waive
6 future claims that Spectra Logic infringes the '766 patent. In an email to Overland Storage's
7 counsel dated June 8, 2011, counsel for Spectra Logic asserted that Overland needed "to decide
8 which is more important to it -- evidence that might support it's present litigation or holding on to
9 potential future defendants. It appears to us that we would all be better off if they opted for the
10 former." Overland Storage did not agree to waive its infringement claims against Spectra Logic.

11 23. On information and belief, Spectra Logic has continued to sell tape libraries that
12 practice the '766 patent after receiving notice from Overland Storage that those products infringe
13 the '766 patent. The filing of the complaint in this action also constitutes notice to Spectra Logic
14 of the '766 patent under 35 U.S.C. § 287.

15 24. As a result of the infringement of the '766 patent by Spectra Logic, Overland
16 Storage has suffered and will continue to suffer damages in an amount to be proven at trial.

17 25. On information and belief, Spectra Logic's infringement of the '766 patent has
18 been and is willful, and thus entitles Overland Storage to increased damages under 35 U.S.C.
19 § 284 and to attorneys' fees and costs incurred in litigating this action under 35 U.S.C. § 285.

20 26. Overland Storage has been irreparably harmed by these acts of infringement and
21 will continue to be harmed unless Spectra Logic's further acts of infringement are restrained and
22 enjoined by order of this Court. Overland Storage has no adequate remedy at law.

COUNT TWO

Infringement of the '581 Patent by Spectra Logic

25 27. Overland Storage incorporates by reference each of the allegations set forth above.

26 28. On information and belief, Spectra Logic, without authority, has directly infringed
27 and continues to directly infringe, under 35 U.S.C. § 271(a), the '581 patent by making, using,
28 offering to sell, or selling within the United States, or importing into the United States, the

1 accused products, including but not limited to the Spectra T50e Library. The accused products,
2 alone and/or in combination with other products, practice each of the limitations of independent
3 claims 1, 10, 16, and 19 and dependent claims 2, 5, 6, 7, 9 and 12 of the '581 patent.

4 29. On information and belief, Spectra Logic, without authority, has actively induced
5 and continues to actively induce infringement by others, under 35 U.S.C. § 271(b), by
6 intentionally causing others to directly infringe the claims of the '581 patent and/or by
7 intentionally instructing others how to use the accused products in a manner that infringes the
8 claims of the '581 patent. On information and belief, Spectra Logic has induced and continues to
9 induce infringement by instructing customers to operate the products in an infringing manner
10 and/or when Spectra Logic performs quality assurance testing or otherwise operates the accused
11 products in the United States. For example, Spectra Logic provides the accused products in a
12 default configuration that implements the infringing features.

13 30. On information and belief, Spectra Logic, without authority, has contributorily
14 infringed and continues to contributorily infringe, under 35 U.S.C. § 271(c), by importing into the
15 United States, selling and/or offering to sell within the United States accused products that
16 (1) constitute a material part of the invention of the '581 patent, (2) Spectra Logic knows to be
17 especially adapted for use in infringing the '581 patent, and (3) are not staple articles of
18 commerce suitable for substantial noninfringing use with respect to the '581 patent. On
19 information and belief, Spectra Logic ships the accused products with all the features required to
20 infringe the asserted claims of the '581 patent. On information and belief, these products are
21 designed to implement the infringing features, and the default settings of the accused products, as
22 shipped, are set accordingly.

23 31. Spectra Logic had actual notice of infringement of the '581 patent before the filing
24 of this complaint. In or around May 2011, Overland Storage served subpoenas on Spectra Logic
25 relating to Spectra Logic's sale of tape libraries that practice the '581 patent. The '581 patent was
26 expressly identified in those subpoenas. In response, Spectra Logic stated that it would only
27 comply with Overland Storage's subpoenas if Overland Storage would agree to waive future
28 claims that Spectra Logic infringes the '581 patent. In an email to Overland Storage's counsel

1 dated June 8, 2011, counsel for Spectra Logic asserted that Overland needed “to decide which is
2 more important to it -- evidence that might support it’s present litigation or holding on to potential
3 future defendants. It appears to us that we would all be better off if they opted for the former.”

4 Overland Storage did not agree to waive its infringement claims against Spectra Logic.

5 32. On information and belief, Spectra Logic has continued to sell tape libraries that
6 practice the ’581 patent after receiving notice from Overland Storage that those products infringe
7 the ’581 patent. The filing of the initial complaint in this action also constitutes notice to Spectra
8 Logic of the ’581 patent under 35 U.S.C. § 287.

9 33. As a result of the infringement of the ’581 patent by Spectra Logic, Overland
10 Storage has suffered and will continue to suffer damages in an amount to be proven at trial.

11 34. On information and belief, Spectra Logic’s infringement of the ’581 patent has
12 been and is willful, and thus entitles Overland Storage to increased damages under 35 U.S.C.
13 § 284 and to attorneys’ fees and costs incurred in litigating this action under 35 U.S.C. § 285.

14 35. Overland Storage has been irreparably harmed by these acts of infringement and
15 will continue to be harmed unless Spectra Logic’s further acts of infringement are restrained and
16 enjoined by order of this Court. Overland Storage has no adequate remedy at law.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Overland Storage prays for judgment:

19 1. That Overland Storage be adjudged the owner of the ’766 and ’581 patents and
20 entitled to all rights of recovery thereunder, and that the ’766 and ’581 patents are valid and
21 enforceable;

22 2. That Spectra Logic be adjudged to have directly infringed, induced infringement
23 and contributed to infringement of the ’766 and ’581 patents;

24 3. That Spectra Logic and its officers, principals, agents, attorneys, servants,
25 employees and all others in active concert or participation with them, and its successors and
26 assigns, be enjoined by preliminary and permanent injunction from infringement, inducement of
27 infringement, and contributory infringement of the ’766 and ’581 patents, including but not
28 limited to making, using, importing, offering to sell and selling the accused products;

1 4. That Overland Storage be awarded damages, including treble damages, under 35
2 U.S.C. § 284 from Spectra Logic, adequate to compensate Overland Storage for infringement of
3 the '766 and '581 patents in an amount to be proven at trial, together with interest and costs as
4 fixed by the Court;

5 5. That this case be declared an exceptional case within the meaning of 35 U.S.C.
6 § 285 and that Overland Storage be awarded the attorneys' fees, costs, and expenses that it incurs
7 prosecuting this action;

8 6. That Overland Storage be awarded prejudgment interest; and

9 7. For such other and further equitable relief as the Court deems proper.

10 **DEMAND FOR JURY TRIAL**

11 Overland Storage demands a trial by jury for all issues so triable pursuant to Federal Rule
12 of Civil Procedure 38(b).

13 Dated: June 28, 2012

DLA PIPER LLP (US)

14
15 By /s/ Sean C. Cunningham
16 SEAN C. CUNNINGHAM
17 BRENT K. YAMASHITA
18 ERIN P. GIBSON
19 ROBERT BUERGI
20 JACOB D. ANDERSON
21 SUMMER KRAUSE
22 **DLA PIPER LLP (US)**
23 Attorneys for Plaintiff
24 OVERLAND STORAGE, INC.

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