

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

SELENE COMMUNICATION
TECHNOLOGIES, LLC,

Plaintiff,

v.

RACKSPACE US, INC.,
RACKSPACE HOSTING, INC., and
JUNGLE DISK, LLC,

Defendant.

C.A. No. 14-342-SLR

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

This is an action for patent infringement in which Plaintiff, Selene Communication Technologies, LLC (“Selene”), makes the following allegations against Defendants Rackspace US, Inc., Rackspace Hosting, Inc., and Jungle Disk, LLC (collectively, “Rackspace”):

PARTIES

1. Plaintiff Selene is a Delaware limited liability company with its principal place of business at 2961 Fontenay Road, Shaker Heights, Ohio 44120.

2. On information and belief, defendant Rackspace US, Inc. is a corporation organized under the laws of the State of Delaware, with its corporate headquarters and principal place of business at 1 Fanatical Place, Windcrest, TX 78218. Rackspace US, Inc. has been served and has made an appearance via counsel in this action.

3. On information and belief, defendant Rackspace Hosting, Inc. is a corporation organized under the laws of the State of Delaware, with its corporate headquarters and principal place of business at 1 Fanatical Place, Windcrest, TX 78218. Rackspace Hosting, Inc. has been served and has made an appearance via counsel in this action.

4. On information and belief, defendant Jungle Disk, LLC is a corporation organized under the laws of the State of Delaware, with its corporate headquarters and principal place of business at 1 Fanatical Place, Windcrest, TX 78218. Jungle Disk, LLC has been served and has made an appearance via counsel in this action.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, including § 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction over Rackspace. In addition to being a Delaware corporation, Rackspace has conducted extensive commercial activities and continues to conduct extensive commercial activities within the State of Delaware. Rackspace, directly and/or through intermediaries or affiliates (including Rackspace entities, subsidiaries, distributors, sales agents, and others), offers for sale, sells, and/or advertises its products and services (including, but not limited to, the products and services that are accused of infringement in this lawsuit) in the United States, the State of Delaware, and this Judicial District. Rackspace, directly and/or through intermediaries or affiliates (including other Rackspace entities, subsidiaries, distributors, sales agents, and others), has purposefully and voluntarily placed one or more of its products (including, but not limited to, the services and products that are accused of infringement in this lawsuit), as described below in Counts I and II, into the stream of commerce with the expectation that they will be purchased by customers in the District of Delaware. Accordingly, Rackspace has committed the tort of patent infringement within the State of Delaware, as alleged in more detail below.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(c) and 1400(b) because, among other reasons, Rackspace is subject to personal jurisdiction in this District, and

has committed and continues to commit acts of patent infringement in this District. On information and belief, for example, Rackspace has used, sold, offered for sale, and imported infringing products/services in this District.

FACTUAL BACKGROUND

8. This lawsuit asserts causes of action for infringement of United States Patent No. 7,143,444 (the “Asserted Patent”). The inventions disclosed in the Asserted Patent were conceived and created by inventors working for a 501(c)(3) nonprofit research institute known as SRI International (“SRI”).

9. Based on a purchase agreement and assignment from SRI, Plaintiff Selene owns the Asserted Patent, and has the exclusive right to sue for infringement and recover damages for all past, present, and future infringement.

THE HISTORY OF SRI

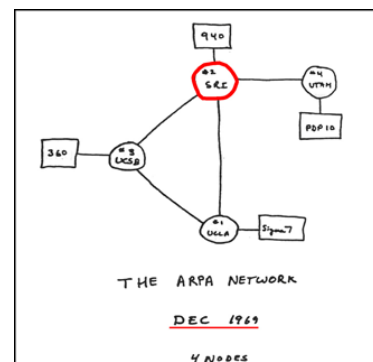
10. All of the inventions disclosed and claimed in the Asserted Patent were originally invented and patented by technology researchers at SRI, a premier institution with a long history of leading technological innovation.

11. SRI, which began as an initiative among researchers at Stanford University, was founded in 1946 as Stanford Research Institute.

12. Since its inception, SRI was a pioneer in advancing technology in ways that had a profound global impact. For instance, in 1963, engineers at SRI created the first optical video disk recording system, paving the way for modern optical storage technologies such as CD-ROMs, DVDs, and Blu-Ray discs.



the



In

the early 1960s, SRI engineers invented the world’s first computer mouse (pictured above right).

In the late 1960s, SRI collaborated with the U.S. Department of Defense to create “ARPANET”—the progenitor of what would become the global Internet (scan of ARPANET map, circa 1969, pictured right).

13. SRI was spun out from Stanford University in 1970. In the early 1970s, SRI was the first organization to utilize domain names, with extensions such as “.com,” “.org,” or “.gov.” In 1977, SRI created what is considered to be the first true Internet connection, by connecting three dissimilar networks.

14. In 1988, SRI acquired the Sarnoff Corporation (“Sarnoff”). Sarnoff, formed in 1941, traces its origins to David Sarnoff, a principal technology researcher at RCA Laboratories. It was created to be a research and development company specializing in vision, video, and semiconductor technology, and it later expanded its research areas to include various facets of



information technology. Sarnoff is known for several important technological advances. For instance, in 1953, David Sarnoff and RCA Laboratories created the world’s first color television system (pictured at right, with RCA President Franklin Folsom (left) and RCA Chairman David Sarnoff (right)). From 1963 to 1968, a team of engineers at the David Sarnoff Research Center developed a revolutionary method for the electronic control of light reflected from liquid crystals—leading to their invention of the liquid crystal display (LCD). Sarnoff is also credited for the development of the electron microscope and early optoelectronic components such as lasers and LEDs.

15. In 2007, SRI spun off its creation of Siri, a virtual personal assistant with a natural language interface, as Siri, Inc. Siri was acquired by Apple Inc. in 2011.

16. SRI today is a nonprofit, independent research and innovation center serving government and industry that derives revenue from a variety of sources, including licensing. SRI employs over 2,500 employees at research facilities across the United States and abroad, including researchers at the former Sarnoff facilities in Princeton, New Jersey.

17. Each of the Asserted Patent issued as the result of the inventiveness of SRI personnel and its significant research investment.

SELENE COMMUNICATION TECHNOLOGIES, LLC

18. Selene was created in 2011 in order to advance technological innovation by active participation in all areas of the patent market, including licensing. By creating a secondary market for SRI patents, Selene believes it is promoting innovation and providing capital to SRI that can be reinvested by SRI in further research.

19. Selene completed a transaction to, among other things, acquire the Asserted Patent from SRI in July 2013. The transaction included a non-exclusive license to the U.S. government for the patent.

UNITED STATES PATENT NO. 7,143,444

20. On November 28, 2006, the PTO duly and legally issued United States Patent No. 7,143,444 (the “’444 Patent”), entitled “Application-Layer Anomaly and Misuse Detection,” listing as inventors Phillip Andrew Porras, Magnus Almgren, Ulf E. Lindqvist, and Steven Mark Dawson, after a full and fair examination. A true and correct copy of the ’444 Patent is attached as **Exhibit A**.

21. Selene is the owner of the entire right, title, and interest in and to the '444 Patent by assignment, and has the exclusive right to sue for infringement and recover damages for all past, present and future infringement, including against Rackspace.

22. The '444 Patent discloses and claims, among other things, novel methods and systems for hosting an intrusion detection process in a server, where the intrusion detection process is integrated with a server process. The '444 Patent teaches inventions that are fundamental to modern methods and systems for intrusion detection components and processes. By way of example only, Claim 1 recites one of the inventions disclosed in the '444 Patent:

1. A method comprising:
in a server, hosting an intrusion detection process that provides intrusion detection services;
integrating the intrusion detection process with a server process; and
passing a request for data received by the server process to the intrusion detection process,
where the intrusion detection process comprises:
packing a subset of information from the request into an analysis format; and
delivering the subset in a funneling process, via a socket, to an analysis process.

23. On November 28, 2001, Phillip Andrew Porras, Magnus Almgren, Ulf E. Lindqvist, and Steven Mark Dawson filed their application for what would become the '444 Patent. Each of the inventors were employed by SRI at its facilities in Menlo Park, California.

24. SRI pioneered the field of network intrusion detection. In 1997, SRI researchers published their creation of the Event Monitoring Enabling Responses to Anomalous Live Disturbances ("EMERALD"),¹ which became a foundational and patented industry standard for intrusion detection.

¹ See Porras et al., *EMERALD: Event Monitoring Enabling Responses to Anomalous Live Disturbances*, 1997 National Information Systems Security Conference (Oct. 1997), available at <http://www.csl.sri.com/papers/emerald-niss97/> (last visited Feb. 20, 2014).

25. SRI continues to license its patent related to its EMERALD technology to industry leaders in the field of cyber-security to date, including, most recently, Symantec and IBM.² SRI's EMERALD research team is led by Principal Investigator Phillip Porras, the Program Director of SRI's Internet Security Group and an inventor of the '444 Patent.³

26. The '444 Patent, while covering technology distinct from EMERALD, advanced the state of the art of intrusion detection by generally teaching methods and systems for effectively hosting an intrusion detection process in a server and integrating the intrusion detection processes into server processes.

27. The inventions of the '444 Patent are fundamental to modern methods and systems for intrusion detection. The '444 Patent has been cited during the prosecution of more than 13 later-filed patents and has more forward citations than 72.6% of all comparable U.S. patents. The '444 Patent has been cited in the patent applications of a variety of industry leaders in intrusion detection including Hewlett-Packard, Symantec, and Microsoft.

RACKSPACE'S INFRINGEMENT OF THE ASSERTED PATENT

28. Rackspace, founded in 1998, is a publicly-traded company that advertises itself as a leader in hybrid cloud and open-source operating systems for the cloud. Rackspace operates nine data centers on four continents and employs over 5,000 people worldwide.⁴

² See, e.g., Press Release, SRI International Licenses EMERALD Network Intrusion Detection Patents to IBM (Mar. 14, 2013), *available at* <http://www.sri.com/newsroom/press-releases/sri-international-licenses-emerald-network-intrusion-detection-patents-ibm> (last visited Feb. 20, 2014).

³ See SRI International, EMERALD, *available at* <http://www.csl.sri.com/projects/emerald/> (last visited Feb. 20, 2014). Dr. Ulf Lindqvist, another inventor of the '444 Patent, is also a staff member of the EMERALD team.

⁴ See "About Rackspace," *available at* <http://www.rackspace.com/about/> (last visited Feb. 24, 2014).

29. In addition to offering web hosting and associated services, Rackspace also offers dedicated services that include managed security.⁵

30. Rackspace markets and has marketed a Log Manager product and a Threat Management System, powered by Alert Logic. The Log Manager includes a Log Manager Sensor component and a Log Review component.⁶ The Threat Management System includes a Threat Manager Sensor component and an ActiveWatch component.⁷ Each of these two products implements the same methods claimed by the '444 Patent for hosting an intrusion detection process in a server, and integrating the intrusion detection process with a server process.

31. On information and belief, Rackspace provides its customers and users of the Log Manager and the Threat Management System with instructions for how to practice the methods of the '444 Patent. By way of example only, as a result of Rackspace's instructions, customers and users of the Log Manager and Threat Management System host, in a server, an intrusion detection process that provides intrusion detection services, integrate the intrusion detection process with a server process, and pass requests for data received by the server process to the intrusion detection process which, in turn, comprises packing a subset of information from the request into an analysis format and delivering the subset in a funneling process, via a socket, to an analysis process.

⁵ See "Managed Security," *available at* http://www.rackspace.com/managed_hosting/services/security/ (last visited Feb. 24, 2014).

⁶ See "Threat and Log Management Solutions," *available at* http://www.rackspace.com/managed_hosting/services/security/threatmgr/ (last visited Feb. 24, 2014).

⁷ See "Threat and Log Management Solutions," *available at* http://www.rackspace.com/managed_hosting/services/security/threatmgr/ (last visited Feb. 24, 2014).

32. On information and belief, in making these instructions available, Rackspace specifically intended to encourage its customers to follow these instructions in a manner that infringes the '444 Patent.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,143,444

33. Selene refers to and incorporates herein the allegations of paragraphs 1 through 32.

34. Rackspace is liable for direct infringement of the '444 Patent pursuant to 35 U.S.C. § 271(a).

35. Rackspace has directly infringed and continues to directly infringe, either literally or under the doctrine of equivalents, at least Claim 1 of the '444 Patent by making, using, selling, and/or offering to sell in the United States, or importing into the United States, certain methods and/or systems disclosed and claimed in the '444 Patent, specifically including its Log Manager and Threat Management System products.

36. Rackspace has induced its customers to infringe the '444 Patent literally and/or under the doctrine of equivalents. Rackspace has had knowledge of the '444 Patent and evidence of its infringement of the '444 Patent since at least the date Rackspace was served with this Complaint. Rackspace has induced its customers and users of its Log Manager and Threat Management System products to infringe the '444 Patent by providing instructions to practice the methods of the '444 Patent.

37. On information and belief, Rackspace acted with the specific intent to induce its customers to use the methods claimed by the '444 Patent by continuing the above-mentioned activities with knowledge of the '444 Patent.

38. Selene has suffered and continues to suffer damages as a result of Rackspace's infringement of Selene's '444 Patent. Pursuant to 35 U.S.C. § 284, Selene is entitled to recover damages from Rackspace for its infringing acts in an amount subject to proof at trial, but no less than a reasonable royalty.

39. Rackspace's infringement of Selene's '444 Patent has damaged and will continue to damage Selene, causing irreparable harm for which there is no adequate remedy at law, unless Rackspace is enjoined by this Court.

PRAYER FOR RELIEF

Selene, respectfully requests the Court to enter judgment in its favor and against Rackspace, granting the following relief:

- A. Judgment in Plaintiff's favor that Rackspace has infringed and continues to infringe, literally and/or under the doctrine of equivalents, directly and/or indirectly, the '444 Patent;
- B. A permanent injunction enjoining Rackspace and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '444 Patent, or such other equitable relief the Court determines is warranted;
- C. An award to Plaintiff of damages adequate to compensate it for Rackspace's acts of patent infringement, but in no event less than a reasonable royalty, together with interest, costs, and expenses as fixed by the court pursuant to 35 U.S.C. § 284;

- D. A judgment and order requiring Rackspace to provide an accounting and to pay supplemental damages to Selene, including without limitation, pre-judgment and post-judgment interest; and
- E. Any further relief to which Selene may be entitled.

JURY DEMAND

Selene, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Date: June 27, 2014

BAYARD, P.A.

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