

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MLR, LLC,)	
)	
Plaintiff,)	
)	Civil Action No. 1:14cv135 (GBL/TRJ)
v.)	
)	JURY DEMANDED
DELL INC.,)	
)	
Defendant.)	

AMENDED COMPLAINT

Plaintiff MLR, LLC (“MLR”) complains of Defendant Dell Inc. (“Dell”) as follows:

JURISDICTION AND VENUE

1. Title 28 of the United States Code Section 1338(a) confers subject matter jurisdiction on this Court because Defendant has infringed Plaintiff’s patents. The Patent Act of 1952, as amended, 35 U.S.C. § 271, *et seq.*, makes patent infringement illegal and actionable through a private cause of action.

2. Defendant has transacted business in this judicial district by making, using, selling, or offering to sell and distributing products that infringe MLR’s patents either in this judicial district or in the United States.

3. Venue is proper in the Eastern District of Virginia under the general federal venue statute, 28 U.S.C. § 1391(d), and under the specific venue provision relating to patent-infringement cases, 28 U.S.C. § 1400(b).

PARTIES

4. MLR is a Virginia limited liability company with offices at 6190 Hardy Drive, McLean, Virginia 22101. MLR is the assignee and owns all right, title and interest in and has

standing to sue for infringement of United States Patent Nos. 7,386,322, 7,343,173, 6,961,584, 6,934,558, 6,134,453, and 5,854,985 (“the MLR Patents”).

5. Dell Inc. (“Dell”) is a Delaware corporation with its principal place of business at 1 Dell Way, Round Rock, Texas 78682. Dell has previously and is presently making, using, selling, offering for sale, and/or importing into the United States portable wireless products that infringe one or more claims of the MLR Patents. Dell has infringed the MLR Patents either directly or through acts of contributory infringement or inducement in violation of 35 U.S.C. § 271.

BACKGROUND COMMON TO ALL COUNTS

6. MLR is the owner of patent rights, which cover commercially significant technologies related to the control of multi-mode, multi-frequency, and multi-protocol networks for electronic communications devices. The MLR patents, for example, cover portable wireless devices, such as cellular handsets and portable computers, which can access different cellular or wireless networks to facilitate wireless voice and/or data communications.

7. Defendant designs, manufactures, and sells portable wireless devices, including portable computing devices, which infringe the MLR Patents.

8. Defendant sells portable computers and mobile telephones (among others, the Accused Devices listed in Exhibit A to this Amended Complaint) to people in the United States. It sells a lot of portable computers. In its 2013 10K annual report to the SEC, Dell reported “net revenue” of nearly \$57 billion dollars (\$56,940,000,000) for fiscal year ending February 1, 2013. The website www.gartner.com reported that in the Fourth Quarter of 2012 alone Dell shipped more than 9 million personal computers, including both desktop and portable computers. Some of Dell’s millions of customers directly infringe the MLR Patents, with their Portable Devices.

Examples and explanations of this direct infringement are set forth in the multi-hundred-page claim charts that MLR provided to Dell on July 18, 2011 and that are attached as part of Exhibit A.

9. Dell has knowledge of the MLR patents and the infringement of those patents. Dell has known of the existence of the MLR patents for years prior to this lawsuit. On September 4, 2010, Charles Leedom of MLR (a named inventor or co-inventor on all of the patents-in-suit) wrote a letter to Lawrence Tu, the Senior Vice President and General Counsel for Dell. In that letter, Mr. Leedom referenced, among others, all of the MLR Patents and stated that he believed that these patent rights “cover many of Dell’s portable wireless products . . .” Mr. Leedom also noted in that letter that “MLR believes that Dell’s portable wireless devices . . . infringe MLR patent claim 1 of the ’985 patent, claim 11 of the ’453 patent, claims 1, 7, and 8 of the ’558 patent and claims 1, 5, 6, and 16 of the ’322 patent.” Exhibit B at 1. Mr. Leedom’s letter also enclosed copies of a court ruling from California, which had construed the terms of several of the patents mentioned.

10. While Mr. Leedom’s initial letter did not include claim charts outlining the specifics of MLR’s infringement contentions, after the parties worked out a non-disclosure agreement, MLR sent claim charts on July 18, 2011, *via* email from Mr. Leedom to Chad Anson (legal Director at Dell) with a copy to outside counsel, Scott Gordon. A copy of that email and claim charts is attached as Exhibit A. Despite a number of intervening follow-up-messages by MLR, Dell did not respond until January 11, 2012. Since at least July of 2011 Dell has known of their infringement of the MLR Patents.

11. Mr. Gordon spoke with outside counsel for MLR on January 20, 2012. In that telephone call, Mr. Gordon, acting as Dell’s agent, discussed the MLR patent claims in detail.

MLR's counsel sent Mr. Gordon a follow-up email on February 23, 2012, answering several of Mr. Gordon's questions. The email also asked Mr. Gordon to provide Dell's relevant sales figures so a proper license fee could be determined. On March 20, 2012, Mr. Gordon responded by email.

12. In that message, Mr. Gordon did not deny that infringement existed. Instead, he stated, "it remains Dell's position that this is a supplier issue and that Dell's suppliers should be contacted to resolve any potential dispute with MLR." A copy of Mr. Gordon's email is attached as Exhibit C.

13. At some point after sending this email, Mr. Gordon left his firm and stopped representing Dell in this matter. MLR's outside counsel contacted Mr. Anson again after it was unsuccessful in getting any further response from Mr. Gordon. Mr. Anson referred MLR to another Dell in-house counsel, Michele Connors. Ms. Connors was Senior Counsel at Dell. MLR's outside counsel then initiated contact with Ms. Connors and new outside counsel, Robert Holland of Terrile, Cannatti, Chambers & Holland.

14. Prior to speaking with Ms. Connors and Mr. Holland, outside counsel for MLR again provided detailed claim charts for Dell to review. A copy of that email and printouts of the attached claim charts are attached here as Exhibit D.

15. MLR had two conversations with Ms. Connors and Mr. Holland in late 2013. Despite numerous follow up message from MLR's outside counsel to Mr. Holland after those conversations, he did not respond on Dell's behalf.

16. Defendant has acted despite an objectively high likelihood that its actions constituted infringement of a valid patent. This objectively high likelihood of infringement is set forth in MLR's detailed claim charts sent to Dell (Exhibit D). Dell knew or should have known

of the objectively high likelihood both independently and having reviewed those claim charts. In response to one email inquiry by MLR, rather than disputing infringement in any way, Dell's then-outside counsel and agent, Scott Gordon advised MLR that it was Dell's position that the infringement issue should be discussed with Dell's suppliers.

17. Defendant specifically intended their customers to infringe [the patents] and knew that the customer's acts constituted infringement." MLR had advised Dell of the MLR Patents and provided multi-page claim charts for the patents. Despite being been advised of and being aware of its infringement and having been provided claim charts, Dell continued to instruct its customers on methods of using the Accused Devices in an infringing manner.

DIRECT PATENT INFRINGEMENT

18. MLR incorporates by reference paragraphs 1-17 of the Amended Complaint as if fully set forth here.

19. Defendant has infringed and continues to infringe the MLR Patents both directly and indirectly (through acts of inducement).

20. Defendant's infringing products include multi-mode Wi-Fi enabled and broadband-capable portable computers and laptop computers. Infringing portable computers and laptop computers include without limitation those Dell models listed in Exhibit A to this complaint.

21. Defendant's direct infringement has injured MLR and it, therefore, is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

22. Defendant's infringement, has been willful because it has known of the MLR Patents and has nonetheless injured and will continue to injure MLR, unless and until this Court

enters an injunction, which prohibits further infringement and specifically enjoins further manufacture, use, sale and/or offer for sale of products or services that come within the scope of the MLR Patents.

INDUCEMENT OF DIRECT PATENT INFRINGEMENT

23. Defendant has infringed and continues to infringe the MLR Patents indirectly through acts of inducement.

24. Defendant's infringing products include multi-mode Wi-Fi enabled and broadband-capable portable computers and laptop computers. Infringing portable computers and laptop computers include without limitation those Dell models listed in Exhibit A to this Amended Complaint. In addition to Dell's direct infringement, Dell's customers, who number in the multi-millions and who use its multi-mode Wif-Fi enabled and broadband-capable portable computers and laptop computers, also directly infringe the MLR patents. Dell has continued to instruct its customers how to use the Accused Products in an infringing manner after being advised of the MLR Patents, being provided detailed claim charts, and being aware of the infringement of the MLR Patents.

25. Dell has sold its computers, knowing of the MLR Patents, with the specific intent that its customers infringe the MLR Patents.

26. Defendant's indirect infringement by inducement has injured MLR and it, therefore, is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

27. Defendant's indirect infringement by inducement, has been willful because it has known of the MLR Patents and has nonetheless injured and will continue to injure MLR, unless and until this Court enters an injunction, which prohibits further infringement and specifically

enjoins further manufacture, use, sale and/or offer for sale of products or services that come within the scope of the MLR Patents.

JURY DEMAND

MLR demands a trial by jury on all issues presented that can properly be tried to a jury.

REQUEST FOR RELIEF

MLR asks this Court to enter judgment against Defendant and against its subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with Defendant, granting the following relief:

- A. An award of damages adequate to compensate MLR for the infringement that has occurred, together with prejudgment interest from the date infringement began;
- B. All other damages permitted by 35 U.S.C. § 284;
- C. A finding that Dell's infringement has been willful;
- D. A finding that this case is exceptional and an award to MLR of its attorneys' fees and costs as provided by 35 U.S.C. § 285;
- E. A permanent injunction prohibiting further direct infringement and indirect infringement by inducement of the MLR Patents; and
- F. Such other and further relief as this Court or a jury may deem proper and just.

Dated: August 15, 2014

Respectfully submitted,

/s/ Amy S. Owen

Amy S. Owen (VSB #27692)
aowen@brigliahundley.com
Nicholas V. Cumings (VSB #82022)
ncumings@brigliahundley.com
Briglia Hundley, P.C.
3975 University Drive, Suite 100
Fairfax, Virginia 22030
Tel: 703-883-9101
Fax: 703-942-8092

Of Counsel:

William W. Flachsbart
wwf@fg-law.com
Michael R. La Porte
mrl@fg-law.com
Flachsbart & Greenspoon, LLC
333 N. Michigan Ave., 27th Floor
Chicago, Illinois 60601
Tel: 312-551-9500
Fax: 312-551-9501

ATTORNEYS FOR PLAINTIFF, MLR, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2014, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Charles B. Molster, III
cmolster@winston.com
Winston & Strawn LLP
1700 K Street, N.W.
Washington, D.C. 20006
T: (202) 282-5988
F: (202) 282-5100

Kimball R. Anderson (pro hac vice)
kanderson@winston.com
Kathleen B. Barry (pro hac vice)
kbarry@winston.com
Winston & Strawn LLP
35 West Wacker Drive
Chicago, Illinois 60601
T: (312) 558-5600
F: (312) 558-5700

Attorneys for Defendant Dell Inc.

/s/ Amy S. Owen
Amy S. Owen (VSB #27692)
aowen@brigliahundley.com
Nicholas V. Cumings (VSB #82022)
ncumings@brigliahundley.com
Briglia Hundley, P.C.
3975 University Drive, Suite 100
Fairfax, Virginia 22030
Tel: 703-883-9101
Fax: 703-942-8092

ATTORNEYS FOR PLAINTIFF, MLR, LLC