

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

CLOUDING CORP.,

Plaintiff,

v.

SAP AG and
SAP AMERICA, INC.,

Defendants.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.* in which Plaintiff Clouding Corp. (“Clouding” or “Plaintiff”) makes the following allegations against Defendants SAP AG and SAP America, Inc. (collectively, “SAP” or “Defendant”).

BACKGROUND

This instant Complaint alleges SAP infringed and continues to infringe the same patents at issue in *Clouding IP, LLC v. SAP AG, et al*, 13-cv-01456-LPS (D. Del) (“Clouding IP Litigation”) filed on August 17, 2013. The patents asserted here, and in the Clouding IP Litigation were assigned by Symantec Corporation to Clouding IP, LLC. On July 28, 2014, the District Court dismissed the Clouding IP Litigation finding that a lack of prudential standing deprived the District Court of subject matter jurisdiction. On August 10, 2014, Clouding IP, LLC, and Symantec Corporation entered into an amended and restated Patent Purchase Agreement resolving all of the issues identified by the District Court in its July 28, 2014 Order. On August 11, 2014, Clouding IP, LLC moved for reconsideration of the district court’s dismissal for failing to grant leave for Clouding IP, LLC to amend its pleadings to cure the

alleged defect regarding prudential standing. While the motion for reconsideration was pending and prior to the filing of the instant Complaint, Clouding IP, LLC transferred the patents asserted here and in the Clouding IP Litigation to Clouding Corp.

PARTIES

1. Plaintiff Clouding Corp. is a Delaware corporation with its principal place of business at 11100 Santa Monica Blvd., Ste. 380, Los Angeles, California 90025.

2. On information and belief, Defendant SAP AG is a German corporation with its principal place of business at Dietmar-Hopp-Allee 16, Walldorf, Germany, 69190.

3. On information and belief SAP America, Inc. is a Delaware corporation with its principal place of business at 3999 West Chester Pike, Newtown Square, PA 19073. On information and belief, SAP America, Inc. has appointed The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801 as its agent for service of process.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. On information and belief, Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Delaware Long Arm Statute, due to having availed themselves of the rights and benefits of Delaware by engaging in activities, including: (i) incorporating under Delaware law; (ii) conducting substantial business in this forum; and (iii) engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware and in this Judicial District.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). On information and belief, Defendants have engaged in activities including: transacting business in this district, incorporating in this district, and committed acts of patent infringement in this district.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 5,825,891

7. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-6 above, as if fully set forth herein.

8. Plaintiff Clouding is the owner by assignment of United States Patent No. 5,825,891 (the ‘891 patent’) titled “Key Management for Network Communication.” The ‘891 patent was duly and legally issued by the United States Patent and Trademark Office on October 20, 1998. Clouding is the owner by assignment from Clouding IP, LLC of the ‘891 patent. A true and correct copy of the ‘891 patent is included as Exhibit A.

9. Defendant SAP makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and believe, at least some of SAP’s cloud computing products and/or services provide or support use of a method for updating a tunnel record.

10. On information and belief, Defendant SAP has infringed and continues to infringe the ‘891 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the ‘891 patent. Such cloud computing products and/or services include, by way of example and without limitation, SAP Support Network, the use of which are covered by one or more claims of the ‘891 patent, including but not limited to claim 6. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the ‘891 patent, SAP has injured

Clouding and is liable to Clouding for infringement of the '891 patent pursuant to 35 U.S.C. § 271.

11. As a result of Defendant SAP's infringement of the '891 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for SAP's infringement, but in no event less than a reasonable royalty for the use made of the invention by SAP, together with interest and costs as fixed by the Court.

COUNT II
INFRINGEMENT OF U.S. PATENT NO 6,738,799

12. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-11 above, as if fully set forth herein.

13. Plaintiff Clouding is the owner by assignment of United States Patent No. 6,738,799 (the '799 patent") titled "Methods and Apparatuses for File Synchronization and Updating Using a Signature List." The '799 patent was duly and legally issued by the United States Patent and Trademark Office on May 18, 2004. Clouding is the owner by assignment from Clouding IP, LLC of the '799 patent. A true and correct copy of the '799 patent is included as Exhibit B.

14. Defendant SAP makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and believe, at least some of SAP's cloud computing products and/or services provide or support use of a method for updating records in computer networks.

15. On information and belief, Defendant SAP has infringed and continues to infringe the '799 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '799 patent. Such cloud computing products and/or services include, by way of example and without limitation,

SAP HANA Cloud, the use of which are covered by one or more claims of ‘the ‘799 patent, including but not limited to claim 37. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the ‘799 patent, SAP has injured Clouding and is liable to Clouding for infringement of the ‘799 patent pursuant to 35 U.S.C. § 271.

16. As a result of Defendant SAP’s infringement of the ‘799 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for SAP’s infringement, but in no event less than a reasonable royalty for the use made of the invention by SAP, together with interest and costs as fixed by the Court.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 6,925,481

17. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-16 above, as if fully set forth herein.

18. Plaintiff Clouding is the owner by assignment of United States Patent No. 6,925,481 (the ‘481 patent”) titled “Technique for Enabling Remote Data Access and Manipulation from a Pervasive Device.” The ‘481 patent was duly and legally issued by the United States Patent and Trademark Office on August 2, 2005. Clouding is the owner by assignment from Clouding IP, LLC of the ‘481 patent. A true and correct copy of the ‘481 patent is included as Exhibit C.

19. Defendant SAP makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and believe, at least some of SAP’s cloud computing products and/or services provide or support use of a method for data access and manipulation from a pervasive device.

20. On information and belief, Defendant SAP has infringed and continues to infringe the '481 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '481 patent. Such cloud computing products and/or services include, by way of example and without limitation, SAP Business ByDesign and SAP Collections Insight, the use of which are covered by one or more claims of the '481 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the '481 patent, SAP has injured Clouding and is liable to Clouding for infringement of the '481 patent pursuant to 35 U.S.C. § 271.

21. As a result of Defendant SAP's infringement of the '481 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for SAP's infringement, but in no event less than a reasonable royalty for the use made of the invention by SAP, together with interest and costs as fixed by the Court.

COUNT IV
INFRINGEMENT OF U.S. PATENT NO. 7,254,621

22. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-21 above, as if fully set forth herein.

23. Plaintiff Clouding is the owner by assignment of United States Patent No. 7,254,621 (the '621 patent") titled "Technique for Enabling Remote Data Access and Manipulation from a Pervasive Device." The '621 patent was duly and legally issued by the United States Patent and Trademark Office on August 7, 2007. Clouding is the owner by assignment from Clouding IP, LLC of the '621 patent. A true and correct copy of the '621 patent is included as Exhibit D.

24. Defendant SAP makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and believe, at least some of SAP's cloud computing products and/or services provide or support use of a method for enabling data access and manipulation from a pervasive device.

25. On information and belief, Defendant SAP has infringed and continues to infringe the '621 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services covered by one or more claims of the '621 patent. Such cloud computing products and/or services include, by way of example and without limitation, SAP Business ByDesign and SAP Collections Insight, the use of which are covered by one or more claims of the '621 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling such products and services covered by one or more claims of the '621 patent, SAP has injured Clouding and is liable to Clouding for infringement of the '621 patent pursuant to 35 U.S.C. § 271.

26. As a result of Defendant SAP's infringement of the '621 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for SAP's infringement, but in no event less than a reasonable royalty for the use made of the invention by SAP, together with interest and costs as fixed by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Clouding respectfully requests that this Court enter:

1. A judgment in favor of Plaintiff Clouding that Defendant SAP has infringed, either literally and/or under the doctrine of equivalents, the '891 patent, the '799 patent, the '481 patent, and the '621 patent;

2. A judgment and order requiring Defendant SAP to pay Plaintiff Clouding its damages, costs, expenses, and pre-judgment and post-judgment interest as provided under 35

U.S.C. § 284 for SAP's infringement of the '891 patent, the '799 patent, the '481 patent, and the '621 patent;

3. A judgment and order that this case is exceptional and requiring SAP to pay Plaintiff Clouding reasonable experts' fees and attorneys' fees pursuant to 35 U.S.C. § 285; and

4. Any and all other relief as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff Clouding requests a trial by jury of any issues so triable.

September 10, 2014

BAYARD, P.A.

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