

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

CLOUDING CORP.,

Plaintiff,

v.

CA, INC. D/B/A CA TECHNOLOGIES,

Defendant.

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 Defendant CA, Inc. d/b/a/ CA Technologies (“CA Technologies” or “Defendant”).

BACKGROUND

This instant Complaint alleges CA Technologies infringed and continues to infringe the same patents at issue in *Clouding IP, LLC v. CA Technologies, Inc.*, 13-cv-01338-LPS (D. Del) (“Clouding IP Litigation”) filed on July 26, 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 CA Technologies is a Delaware corporation with its principal place of business at One CA Plaza, Islandia, NY 11749. On information and belief, CA Technologies may be served via its registered agent, The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

JURISDICTION AND VENUE

3. 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).

4. On information and belief, Defendant CA Technologies is 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 itself of the rights and benefits of Delaware by incorporating under Delaware law and conducting substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, 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.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b). Defendant CA Technologies is incorporated in this district, and on information and belief, CA Technologies is subject to personal jurisdiction in this district, has transacted business in this district and has committed acts of patent infringement in this district.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,065,637

6. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-5 above, as if fully set forth herein.

7. Plaintiff Clouding is the owner by assignment of United States Patent No. 7,065,637 (“the ’637 patent”) titled “System for Configuration of Dynamic Computing Environments Using a Visual Interface.” The ’637 patent was duly and legally issued by the United States Patent and Trademark Office on June 20, 2006. Clouding is the owner by assignment from Clouding IP, LLC of the ’637 patent. A true and correct copy of the ’637 patent is included as Exhibit A.

8. Defendant CA Technologies makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and belief, at least some of CA Technologies’ cloud computing products and/or services provide or support use of a visual interface to configure cloud computing resources.

9. On information and belief, Defendant CA Technologies has infringed and continues to infringe the ’637 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 ’637 patent. Such cloud computing products and/or services include, by way of example and without limitation, CA AppLogic, the use of which are covered by one or more claims of the ’637 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 ’637 patent, CA Technologies has injured Clouding and is liable to Clouding for infringement of the ’637 patent pursuant to 35 U.S.C. § 271.

10. As a result of Defendant CA Technologies' infringement of the '637 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for CA Technologies' infringement, but in no event less than a reasonable royalty for the use made of the invention by CA Technologies, together with interest and costs as fixed by the Court.

COUNT II
INFRINGEMENT OF U.S. PATENT NO. 7,272,708

11. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-10 above, as if fully set forth herein.

12. Plaintiff Clouding is the owner by assignment of United States Patent No. 7,272,708 ("the '708 patent") titled "System for Configuration of Dynamic Computing Environments Using a Visual Interface." The '708 patent was duly and legally issued by the United States Patent and Trademark Office on September 18, 2007. Clouding is the owner by assignment from Clouding IP, LLC of the '708 patent. A true and correct copy of the '708 patent is included as Exhibit A.

13. Defendant CA Technologies makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and belief, at least some of CA Technologies' cloud computing products and/or services provide or support use of a visual interface to configure cloud computing resources.

14. On information and belief, Defendant CA Technologies has infringed and continues to infringe the '708 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 '708 patent. Such cloud computing products and/or services include, by way of example and without limitation, CA AppLogic, the use of which are covered by one or more claims of the

'708 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 '708 patent, CA Technologies has injured Clouding and is liable to Clouding for infringement of the '708 patent pursuant to 35 U.S.C. § 271.

15. As a result of Defendant CA Technologies' infringement of the '708 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for CA Technologies' infringement, but in no event less than a reasonable royalty for the use made of the invention by CA Technologies, together with interest and costs as fixed by the Court.

COUNT III
INFRINGEMENT OF U.S. PATENT NO. 7,836,292

16. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-15 above, as if fully set forth herein.

17. Plaintiff Clouding is the owner by assignment of United States Patent No. 7,836,292 ("the '292 patent") titled "System for Configuration of Dynamic Computing Environments Using a Visual Interface." The '292 patent was duly and legally issued by the United States Patent and Trademark Office on November 16, 2010. Clouding is the owner by assignment from Clouding IP, LLC of the '292 patent. A true and correct copy of the '292 patent is included as Exhibit B.

18. Defendant CA Technologies makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and belief, at least some of CA Technologies' cloud computing products and/or services provide or support use of a visual interface to configure cloud computing resources.

19. On information and belief, Defendant CA Technologies has infringed and continues to infringe the '292 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 '292 patent. Such cloud computing products and/or services include, by way of example and without limitation, CA AppLogic, the use of which are covered by one or more claims of the '292 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 '292 patent, CA Technologies has injured Clouding and is liable to Clouding for infringement of the '292 patent pursuant to 35 U.S.C. § 271.

20. As a result of Defendant CA Technologies' infringement of the '292 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for CA Technologies' infringement, but in no event less than a reasonable royalty for the use made of the invention by CA Technologies, together with interest and costs as fixed by the Court.

COUNT VI
INFRINGEMENT OF U.S. PATENT NO. 5,495,607

21. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-20 above, as if fully set forth herein.

22. Plaintiff Clouding is the owner by assignment of United States Patent No. 5,495,607 ("the '607 patent") titled "Network Management System Having Virtual Catalog Overview of Files Distributively Stored Across Network Domain." The '607 patent was duly and legally issued by the United States Patent and Trademark Office on February 27, 1996. Clouding is the owner by assignment from Clouding IP, LLC of the '607 patent. A true and correct copy of the '607 patent is included as Exhibit C.

23. Defendant CA Technologies operates one or more server farms (comprising, *inter alia*, servers and computers on a network) that are located in its data centers in the United States. On information and belief, CA Technologies' one or more server farms provide and support cloud computing products and/or services. On information and belief, CA Technologies makes and/or uses a system for monitoring the health of at least some of CA Technologies' servers and computers over a network in its data centers.

24. On information and belief, Defendant CA Technologies has infringed and continues to infringe the '607 patent by, among other things, making, using, offering for sale, and/or selling systems, and products and/or services related thereto, covered by one or more claims of the '607 patent. Such systems include, by way of example and without limitation, a system made and/or used by CA Technologies to monitor the health of servers and computers located in its data centers that support CA AppLogic, which is covered by one or more claims of the '607 patent, including but not limited to claim 9. By making, using, offering for sale, and/or selling such systems, and products and/or services related thereto, covered by one or more claims of the '607 patent, CA Technologies has injured Clouding and is liable to Clouding for infringement of the '607 patent pursuant to 35 U.S.C. § 271.

25. As a result of Defendant CA Technologies' infringement of the '607 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for CA Technologies' infringement, but in no event less than a reasonable royalty for the use made of the invention by CA Technologies, together with interest and costs as fixed by the Court.

COUNT V
INFRINGEMENT OF U.S. PATENT NO. 6,631,449

26. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-25 above, as if fully set forth herein.

27. Plaintiff Clouding is the owner by assignment of United States Patent No. 6,631,449 (“the ‘449 patent”) titled “Dynamic Distributed Data System and Method.” The ‘449 patent was duly and legally issued by the United States Patent and Trademark Office on October 7, 2003. Clouding is the owner by assignment from Clouding IP, LLC of the ‘449 patent. A true and correct copy of the ‘449 patent is included as Exhibit E.

28. CA Technologies makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and belief, at least some of CA Technologies’ cloud computing products and/or services, such as CA ARCserve Replication, are provided by servers using peer-to-peer communication.

29. On information and belief, CA Technologies has infringed and continues to infringe the ‘449 patent by, among other things, making, using, offering for sale, and/or selling cloud computing products and/or services patented under the ‘449 patent. Such cloud computing products and/or services include, by way of example and without limitation, use of CA ARCserver Replication, which is covered by one or more claims of the ‘449 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling cloud computing products and/or services patented under the ‘449 patent, CA Technologies has injured Clouding and is liable to Clouding for infringement of the ‘449 patent pursuant to 35 U.S.C. § 271.

30. As a result of Defendant CA Technologies’ infringement of the ‘449 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for CA Technologies’ infringement, but in no event less than a

reasonable royalty for the use made of the invention by CA Technologies, together with interest and costs as fixed by the Court.

COUNT VI
INFRINGEMENT OF U.S. PATENT NO. 7,596,784

31. Plaintiff Clouding realleges and incorporates by reference paragraphs 1-30 above, as if fully set forth herein.

32. Plaintiff Clouding is the owner by assignment of United States Patent No. 7,596,784 (“the ‘784 patent”) titled “Method System and Apparatus for Providing Pay-Per-Use Distributed Computing Resources.” The ‘784 patent was duly and legally issued by the United States Patent and Trademark Office on September 29, 2009. Clouding is the owner by assignment from Clouding IP, LLC of the ‘784 patent. A true and correct copy of the ‘784 patent is included as Exhibit F.

33. CA Technologies makes, uses, sells, and offers for sale in the United States products and/or services for cloud computing. On information and belief, at least some of CA Technologies’ cloud computing products and/or services provide or support pay-per-use cloud computing.

34. On information and belief, CA Technologies has infringed and continues to infringe the ‘784 patent by, among other things, making, using, offering for sale, and/or selling pay-per-use cloud computing products and/or services patented under the ‘784 patent. Such pay-per-use cloud computing products and/or services include, by way of example and without limitation, use of CA AppLogic, which is covered by one or more claims of the ‘784 patent, including but not limited to claim 1. By making, using, offering for sale, and/or selling pay-per-use cloud computing products and/or services patented under the ‘784 patent, CA Technologies

has injured Clouding and is liable to Clouding for direct infringement of the '784 patent pursuant to 35 U.S.C. § 271.

35. As a result of Defendant CA Technologies' infringement of the '784 patent, Plaintiff Clouding has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for CA Technologies' infringement, but in no event less than a reasonable royalty for the use made of the invention by CA Technologies, 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 CA Technologies has infringed, either literally and/or under the doctrine of equivalents, the '637 patent, the '708 patent, the '292 patent, the '607 patent, the '449 patent, and the '784 patent;
2. A judgment and order requiring Defendant CA Technologies to pay Plaintiff Clouding its damages, costs, expenses, and pre-judgment and post-judgment interest as provided under 35 U.S.C. § 284 for CA Technologies' infringement of the '637 patent, the '708 patent, the '292 patent, the '607 patent; the '449 patent and the '784 patent;
3. A judgment and order that this case is exceptional and requiring CA Technologies to pay Plaintiff Clouding its 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

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