

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BLEMEL TECHNOLOGIES LLC,

Plaintiff,

v.

**NATIONAL INSTRUMENTS
CORPORATION,**

Defendant.

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Case No. 2:15-cv-134

Jury Trial Requested

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Plaintiff Blemel Technologies LLC (“Blemel Technologies” or “Plaintiff”) by and for its Complaint against defendant National Instruments Corporation (“NI” or “Defendant”) hereby makes the following allegations:

THE PARTIES

1. Blemel Technologies is a limited liability company formed under the laws of the State of New York with a principal place of business located at 75 Montebello Road, Suffern, New York 10901.

2. Blemel Technologies’ innovations and research and development are directed by its Chief Technologist, the inventor of the patent-in-suit, Kenneth Blemel, a thirty-five year veteran of, and leader in, the instrumentation, programmable logic device (“PLD”), and embedded systems fields. Mr. Blemel has successfully guided research and development in multiple electronic hardware engineering sub-disciplines through the use of the teachings of the patent described herein.

3. On information and belief, Defendant NI is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 11500 N MoPac Expressway, Austin, Texas 78759-3563.

JURISDICTION AND VENUE

4. This is an action for infringement of a United States patent arising under 35 U.S.C. §100, *et. seq.*, §§ 271, 281, and 284 - 85, among others. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1331 and §1338(a).

5. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, NI has transacted business in this District, has committed acts of patent infringement in this District, and continues to commit acts of patent infringement in this District, entitling Blemel Technologies to relief.

6. NI is subject to this Court's specific and general personal jurisdiction pursuant to due process and the Texas Long Arm Statute, due at least to its presence and substantial business in this forum, including: (i) the presence of its principal place of business in this State; (ii) its commission of at least a portion of the infringement alleged herein; and (iii) regularly and systematically doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

7. More specifically, personal jurisdiction is proper in this District because, upon information and belief, Defendant, directly and/or through its intermediaries, transacts business in this District, including using, distributing, importing, making, offering for sale, selling, and/or marketing, supporting and advertising of its infringing products in Texas and in this District.

8. In addition, Defendant has purposefully availed itself of the benefits of this District by filing lawsuits in this District. *See, e.g., National Instruments Corp. v. The MathWorks Inc.*, No. 2:01-cv-00011-TJW (E. D. Tex. 2003 (Marshall Division)).

9. The exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice.

BACKGROUND

10. This lawsuit asserts causes of action for infringement of United States Patent No. 6,938,177 (the “’177 patent”).

11. Kenneth Blemel invented the technology claimed in the ’177 patent.

12. The inventions of the ’177 patent have been used to provide instrumentation for monitoring and control of systems and components of instruments, aircraft, ships, homes, and machinery. Examples include:

- Monitoring signatures on UH-60 Helicopters.
- Instrumentation for prognostic health management of aircraft propulsion systems.
- Instrumentation interface to paired flight data recorders.
- Instrumentation monitoring health signatures of aircraft propulsion systems.
- Instrumentation for management and control of diesel generator sets.
- Instrumentation for monitoring health of ballistic missiles.
- Instrumentation of hybrid micro-grids.

13. The teachings of the ’177 patent enable the rapid prototyping and deployment of complex hardware and software platforms in the constantly changing technology ecosystem. As an example, the claimed invention describes an instrument controller containing a microprocessor for controlling inputs and outputs, a separate field programmable gate array (“FPGA”), which can be utilized as a freely re-configurable parallel processor, and a real-time

quartz controlled clock for time stamping of data before it is stored in non-volatile memory, all of which contribute to the creation of a development platform which allows for the creation of a wide range of hardware controller solutions. At the time of the patent application, the technology provided a new means for in field programmable embedded monitoring and control with time stamped selectable digitizing and collection of multiple analog and digital data at variable bit depths. The technology enabled inter alia real time concurrent processing of the data to measure and control stresses on components and generating messages to alert of anomalous conditions. The use of FPGA-based instrumentation is now widespread in diverse applications including machinery control, field programmable automation of process lines, telecommunications, and equipment diagnostic and prognostic health monitoring.

14. On information and belief, at least Defendant's currently-available NI CompactRIO, FlexRIO, and sbRIO products, use the technology of the '177 patent.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,938,177

15. Blemel Technologies incorporates by reference the allegations set forth in the preceding paragraphs.

16. On August 30, 2005, the '177 patent was duly and legally issued by the United States Patent and Trademark Office to Kenneth Blemel as the sole, named inventor for an invention entitled "Multi-Chip Module Smart Controller." A true and correct copy of the '177 patent is attached hereto as Exhibit A.

17. Blemel Technologies is the assignee and the owner, which holds all rights, title, and interest in and to the '177 patent, and has the right to sue and recover damages for infringement thereof.

18. NI is not licensed under the '177 patent, yet NI knowingly, actively, and lucratively practices the claimed inventions of the patent.

19. On information and belief, NI has been and is now directly infringing one or more claims of the '177 patent by making, using, importing, providing, supplying, distributing, selling, and offering to sell infringing products and systems, and is thus liable to Blemel Technologies pursuant to 35 U.S.C. § 271. NI's infringing products and systems include, but are not limited to, at least the NI CompactRIO, FlexRIO, and sbRIO products (collectively the "RIO products") and the use thereof.

20. Defendant is therefore liable for direct infringement of the '177 patent pursuant to 35 U.S.C. § 271(a).

21. On information and belief, NI also indirectly infringes under 35 U.S. C. § 271(b) by way of inducing others, including its customers, to make, use, import, provide, supply, distribute, sell and offer to sell products and systems that infringe one or more claims of the '177 patent in the United States generally, and in the Eastern District of Texas in particular. More specifically, on information and belief, NI has knowledge of the '177 patent, intends to induce its customers to infringe the patent through its sales, offers for sale, and instructions and specifications provided to those customers, including, but not limited to, those relating to customization of the RIO products to an infringing configuration through the use of its LabView software application, and understands that such actions amount to infringement. Also, on information and belief, NI, with knowledge of the '177 patent, offers module development kits for at least the RIO products at a discount to induce prospective customers to purchase and use those infringing products and to practice the infringing methods. Further, on information and belief, NI, with knowledge of the '177 patent, also offers the LabView FPGA module and free

online LabView FPGA module training, with intent to induce prospective and existing customers to infringe the patent through the graphical system design and use of applications of at least the infringing RIO products. On information and belief, end users have used, and continue to use, the RIO products in an infringing manner.

22. On information and belief, NI has also indirectly infringed and is now indirectly infringing under 35 U.S. C. § 271(c) by way of contributing to the infringement of others, including its customers, by making, using, importing, providing, supplying, distributing, selling, and offering to sell at least the RIO products and systems that infringe one or more claims of the '177 patent in the United States generally, and in the Eastern District of Texas in particular. On information and belief, end users have used, and continue to use, the RIO products in an infringing manner. More specifically, on information and belief, NI sells and offers to sell instrument controllers to its customers that are not staple articles of commerce and that have no substantial uses outside of those that infringe the claims of the '177 patent.

23. The acts of infringement by NI have caused and will continue to cause damage to Blemel Technologies, and Blemel Technologies is entitled to recover damages from NI in an amount no less than a reasonable royalty pursuant to 35 U.S.C. § 284. The full measure of damages sustained as a result of NI's wrongful acts will be proven at trial.

24. The infringement of Blemel Technologies' exclusive rights under the '177 patent by NI has damaged and will continue to damage Blemel Technologies, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

25. NI has infringed and continues to infringe despite an objectively high likelihood that its actions constitute infringement of Blemel Technologies' valid patent rights. On information and belief, NI knew of or should have known of this objectively high risk at least

as early as its receipt of this Complaint and/or when it became aware of the '177 patent. Thus, NI's infringement of the '177 patent has been and continues to be willful.

26. At least as early as its receipt of this Complaint, NI has had knowledge of the '177 patent, which is entitled to statutory presumption of validity under 35 U.S.C. § 282. Blemel Technologies intends to seek discovery on the issue of willfulness and reserves the right to seek a willfulness finding and treble damages under 35 U.S.C. § 284 as well as its attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

27. Pursuant to Fed. R. Civ. P. 38, Plaintiff demands a trial by jury of any and all issues properly triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Blemel Technologies prays for judgment and requests that the Court find in its favor and against NI, and that the Court grant Blemel Technologies the following relief:

- a. Judgment that one or more claims of the '177 patent have been and/or continue to be infringed, either literally or under the doctrine of equivalents, by NI and by others to whose infringement NI has contributed and by others whose infringement has been induced by NI;
- b. Judgment that such infringement has been willful;
- c. Judgment that the '177 patent is not invalid and not unenforceable;
- d. A preliminary and permanent injunction enjoining NI and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing infringement of, or contributing to infringement of the '177 patent;

e. Judgment that NI account for and pay to Blemel Technologies all damages and costs incurred by Blemel Technologies as a result of NI's infringing activities under 35 U.S.C. § 284, to adequately compensate Blemel Technologies for NI's infringement of the '177 patent, but in no event less than a reasonable royalty for the use made by NI of the inventions claimed in the '177 patent, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and enhanced damages as provided by 35 U.S.C. § 284;

f. Pre-judgment and post-judgment interest on the damages caused by NI's infringing activities and other conduct complained of herein or otherwise;

g. A declaration that this is an exceptional case and an award of Blemel Technologies' reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285 or as otherwise permitted by law;

h. All costs of suit; and,

i. Such other and further relief as the Court may deem just and proper under the circumstances.

Dated: February 3, 2015

Respectfully submitted,

/s/ Michael E. Jones

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