

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

SECURE AXCESS, L.L.C., <i>Plaintiff,</i>	§ § §	
v.	§	Case No.: _____
DELL INC., DELL MARKETING L.P., AND DELL PRODUCTS L.P., <i>Defendant.</i>	§ § §	JURY TRIAL DEMANDED

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**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

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COMES NOW Plaintiff Secure Axcess, L.L.C. (“Secure Axcess”) and files this Original Complaint for Patent Infringement against Defendants Dell Inc., Dell Marketing L.P., and Dell Products L.P. (collectively, “Dell” and/or “Defendants”), and alleges as follows:

**I. NATURE OF THE SUIT**

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

**II. THE PARTIES**

2. Plaintiff **Secure Axcess** is a Texas Limited Liability Company having its principal place of business at 555 Republic Drive, Suite 200, Plano, Texas 75074.

3. Defendant **Dell Inc.** is a Delaware corporation having its principal place of business at One Dell Way, Round Rock, Texas 78682. Dell Inc. does business in the State of Texas, including in the Eastern District of Texas, and can be served with process through its

registered agent, Corporation Services Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

4. Defendant **Dell Marketing L.P.** a Texas limited partnership, having its principal place of business at One Dell Way, Round Rock, Texas 78682. Dell Products L.P. does business in the State of Texas, including in the Eastern District of Texas, and can be served with process through its registered agent, Corporation Services Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. Dell Services is a business unit of Dell Marketing L.P. and has a principal place of business in this District at 300 West Plano Parkway, Plano, Texas 75075.

5. Defendant **Dell Products L.P.** is a Texas limited partnership, having its principal place of business at One Dell Way, Round Rock, Texas 78682. Dell Products L.P. does business in the State of Texas, including in the Eastern District of Texas, and can be served with process through its registered agent, Corporation Services Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

### **III. JURISDICTION AND VENUE**

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

7. This Court has specific personal jurisdiction over Defendants pursuant to due process and the Texas Long Arm Statute because Defendants, directly or through intermediaries, have conducted and do conduct substantial business in this forum, including but not limited to: (i) engaging in at least part of the infringing acts alleged herein; (ii) purposefully and voluntarily placing one or more infringing products or services into the stream of commerce with the expectation that they will be purchased and/or used by consumers in this forum; and/or

(iii) regularly doing or soliciting business, engaging in other persistent courses of conduct, or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

8. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)-(d) and 1400(b) for the reasons set forth above. Furthermore, venue is proper because Defendants, directly or through intermediaries, solicit and establish business relationships with individuals and/or entities in this District, and through those business relationships provide infringing products or services as described herein. Each act of Defendants' direct and/or indirect infringing conduct in this District gives rise to proper venue.

#### **IV. BACKGROUND**

9. This cause of action asserts infringement of United States Patent No. 6,172,990 B1, entitled "Media access control micro-RISC stream processor and method for implementing the same" (the "'990 Patent") and United States Patent No. 6,108,713 A, entitled "Media access control architectures and network management systems" (the "'713 Patent") (collectively the "Patent-in-Suit").

10. The '990 Patent was duly and lawfully issued by the United States Patent & Trademark Office on January 9, 2001. A copy of the '990 Patent is attached hereto as Exhibit A.

11. Secure Axxess is the owner and assignee of all rights, title, and interest in and to the '990 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

12. The '713 Patent was duly and lawfully issued by the United States Patent & Trademark Office on August 22, 2000. A copy of the '713 Patent is attached hereto as Exhibit B.

13. Secure Axxess is the owner and assignee of all rights, title, and interest in and to

the '713 Patent and holds the right to sue and recover damages for infringement thereof, including past damages.

14. On information and belief, Defendants offer hardware, software, and network services and solutions in the United States, including Texas, and, particularly within this District. Defendants provide hardware, software, and networking services and solutions including, but not limited to, switches, controllers, and software-defined networking services and solutions. In connection with these hardware, software, and network services and solutions, Defendants make, use, sell, and offer for sale systems that when used infringe at least claim 1 of the '990 Patent and claim 24 of the '713 Patent. The business unit of Defendants that provide these products and services has its headquarters in this District.

## V. CLAIMS

15. Based on the above-described services and products, Plaintiff asserts the following against Defendants:

### **CLAIM 1 – The '990 Patent**

16. The allegations of paragraphs 1-15 above are incorporated by reference as if fully set forth herein.

17. Dell has been and is infringing the '990 Patent by making, using, selling, and/or offering for sale in the United States products and services that fall within the scope of the claims of the '990 Patent. Such infringement is direct, contributory, and/or by inducement.

#### **A. Direct Patent Infringement of the '990 Patent**

18. The allegations of paragraphs 1-17 above are incorporated by reference as if fully set forth herein.

19. Dell has directly infringed and continues to infringe at least claim 1 of the '990 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling, and/or offering to sell in the United States, without Plaintiff's authority, system(s) and method(s) used to implement a software defined network. By way of example only and without limiting Plaintiff's claims to this specific example, Dell's implementation and use of switches, including the Dell Networking Z9500 Ethernet fabric switch, and OpenFlow compliant software-defined networking services and solutions infringe at least claim 1 of the '990 Patent.

**B. Contributory Infringement of the '990 Patent**

20. The allegations of paragraphs 1-19 above are incorporated by reference as if fully set forth herein. Further and in the alternative and in addition to the direct infringement described above, Dell is liable for contributory infringement of the '990 Patent.

21. Dell knowingly contributes to infringement of the '990 Patent by making, selling, or offering for sale components of systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale switches, including the Dell Networking Z9500 Ethernet fabric switch. These components have no substantial non-infringing uses, and they constitute a material part of the invention. Dell was aware of the '990 Patent at least by the time of the filing and serving this Original Complaint for Patent Infringement. Dell was aware that the components of the systems and methods satisfy at least one element of one claim, such as by way of example claim 1, of the '990 Patent. Dell further knows that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 1, of the '990 Patent.

**C. Inducement of Infringement of the '990 Patent**

22. The allegations of paragraphs 1-20 above are incorporated by reference as if fully set forth herein.

23. Further and in the alternative, Dell has knowingly induced infringement of the '990 Patent. Dell induced such infringement through making, using, selling, and/or offering to sell systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale switches, including the Dell Networking Z9500 Ethernet fabric switch, and OpenFlow compliant software-defined networking services and solutions

24. Dell has intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '990 Patent by others, namely customers and/or end-users. Such intentional action was and is the selling and/or offering for sale systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale switches, including the Dell Networking Z9500 Ethernet fabric switch and OpenFlow compliant software-defined networking services and solutions. As a result of its conduct, Dell induced customers and/or end-users to use systems and methods to infringe the claims of the '990 Patent, by way of example at least claim 1. Dell engaged in this conduct while it was aware of the '990 Patent, and knew the acts it was inducing would infringe the '990 Patent.

### **CLAIM 2 – The '713 Patent**

25. The allegations of paragraphs 1-25 above are incorporated by reference as if fully set forth herein.

26. Dell has been and is infringing the '713 Patent by making, using, selling, and/or offering for sale in the United States products and services that fall within the scope of the claims of the '713 Patent. Such infringement is direct, contributory, and/or by inducement.

#### **A. Direct Patent Infringement of the '713 Patent**

27. The allegations of paragraphs 1-27 above are incorporated by reference as if fully set forth herein.

28. Dell has directly infringed and continues to infringe at least claim 24 of the '713 Patent in violation of 35 U.S.C. § 271(a) by making, using, selling, and/or offering to sell in the United States, without Plaintiff's authority, system(s) and method(s) used to implement a software defined network. By way of example only and without limiting Plaintiff's claims to this specific example, Dell's implementation and use of switches, including the Dell Networking Z9500 Ethernet fabric switch, controllers, including the Dell Active Fabric Controller, and OpenFlow compliant software-defined networking services and solutions infringes at least claim 24 of the '713 Patent.

**B. Contributory Infringement of the '713 Patent**

29. The allegations of paragraphs 1-29 above are incorporated by reference as if fully set forth herein.

30. Further and in the alternative and in addition to the direct infringement described above, Dell is liable for contributory infringement of the '713 Patent.

31. Dell knowingly contributes to infringement of the '713 Patent by making, selling, or offering for sale components of systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale switches, including the Dell Networking Z9500 Ethernet fabric switch, and controllers, including the Dell Active Fabric Controller. These components have no substantial non-infringing uses, and they constitute a material part of the invention. Dell was aware of the '713 Patent at least by the time of the filing and serving this Original Complaint for Patent Infringement. Dell was aware that the components of the systems and methods satisfy at least one element of one claim, such as by

way of example claim 24, of the '713 Patent. Dell further knows that use of the components as part of the systems and methods directly infringe at least one claim, such as by way of example claim 24, of the '713 Patent.

**C. Inducement of Infringement of the '713 Patent**

32. The allegations of paragraphs 1-32 above are incorporated by reference as if fully set forth herein.

33. Further and in the alternative, Dell has knowingly induced infringement of the '713 Patent. Dell induced such infringement through making, using, selling, and/or offering to sell systems and methods that can be used to implement a software defined network, including the making, selling, or offering for sale switches, including the Dell Networking Z9500 Ethernet fabric switch, controllers, including the Dell Active Fabric Controller, and OpenFlow compliant software-defined networking services and solutions.

34. Dell has intentionally caused, urged, encouraged, or aided action that induced infringement, including direct infringement, of the '713 Patent by others, namely customers and/or end-users. Such intentional action was and is the selling and/or offering for sale systems and methods for that can be used to implement a software defined network, including the making, selling, or offering for sale switches, including the Dell Networking Z9500 Ethernet fabric switch, controllers, including the Dell Active Fabric Controller, and OpenFlow compliant software-defined networking services and solutions. As a result of its conduct, Dell induced customers and/or end-users to use systems and methods to infringe the claims of the '713 Patent, by way of example at least claim 24. Dell engaged in this conduct while it was aware of the '713 Patent, and knew the acts it was inducing would infringe the '713 Patent.

**VI. NOTICE**



35. The allegations of paragraphs 1-35 above are incorporated by reference as if fully set forth herein.

36. At least by filing and serving this Original Complaint for Patent Infringement, Plaintiff has given Defendant written notice of their infringement.

#### **VII. DAMAGES**

37. The allegations of paragraphs 1-37 above are incorporated by reference as if fully set forth herein.

38. For the above-described infringement, Plaintiff has suffered injury and seeks damages to compensate it adequately for Defendant's infringement of the Patents-in-Suit. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

#### **VIII. JURY DEMAND**

39. Plaintiff requests a jury trial of all issues triable of right by a jury.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests the following relief:

a. A judgment in favor of Plaintiff that Defendants have infringed the '990 Patent, whether literally or under the doctrine of equivalents, as described herein;

b. A judgment in favor of Plaintiff that Defendants have infringed the '713 Patent, whether literally or under the doctrine of equivalents, as described herein;

c. A judgment and order requiring Defendants to pay Plaintiff's damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the '990 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed;

- d. A judgment and order requiring Defendants to pay Plaintiff's damages, costs, expenses, and pre-judgment and post-judgment interest for Defendants' infringement of the '713 Patent as provided under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict or post-judgment infringement with an accounting as needed; and
- e. Such other and further relief as the Court deems just and proper.

Respectfully submitted,



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