

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

MODERN TELECOM SYSTEMS, LLC,

Plaintiff,

v.

DELL INC.,

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Modern Telecom Systems, LLC (“MTS” or “Plaintiff”), for its Complaint against Defendant Dell Inc. (“Dell” or “Defendant”) alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff is a limited liability company organized under the laws of the State of Delaware with a place of business at 913 N. Market Street, Suite 200, Wilmington, DE 19801.

3. On information and belief, Defendant is a corporation organized under the laws of the State of Delaware with a place of business at 1 Dell Way, Round Rock, TX 78682. Dell can be served with process via its registered agent, the Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

4. On information and belief, Defendant sells and offers to sell products and services throughout the United States, including in this District, and introduces products and services into the stream of commerce and that incorporate infringing technology knowing that they would be sold in this District and elsewhere in the United States.

5. On information and belief, Defendant conducts a significant amount of business in this District through online sales and advertisements directly to consumers and through product sales by Dell's distributors and resellers.

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

7. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c) and/or 1400(b).

On information and belief, Defendant resides in this District, conducts business in this District, and at least a portion of the acts of infringement and claims alleged in this Complaint have taken place and are continuing to take place in this District.

9. On information and belief, this Court has personal jurisdiction over Defendant because Defendant is incorporated in Delaware and has purposefully availed itself of the privileges and benefits of the laws of the State of Delaware. Further, Defendant is subject to this Court's general and specific personal jurisdiction because Defendant has sufficient minimum contacts within the State of Delaware, pursuant to due process and/or the Delaware Long Arm Statute, because Defendant purposefully availed itself of the privileges of conducting business in the State of Delaware, and because Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Delaware, including regularly doing or soliciting business and deriving substantial revenue from products and services provided to individuals in this District. The exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice.

BACKGROUND

10. The technology claimed in the patent asserted in this action was invented during the research and development activities of the Rockwell family of companies, including Rockwell Semiconductors Systems, Inc., Conexant Systems, Inc. (“Conexant”), and Mindspeed Technologies, Inc. (“Mindspeed”). In 1998, Rockwell International spun off its Rockwell Semiconductor group and renamed it Conexant. Conexant inherited Rockwell’s mixed signal semiconductor expertise and intellectual property portfolio, and was focused on developing semiconductor products for a broad range of communications networks. Conexant’s Internet Infrastructure group was incorporated as a wholly-owned subsidiary named Mindspeed Technologies, Inc. (“Mindspeed”) in 2001 and spun-off as an independent entity in 2003. Mindspeed’s focus was on semiconductor and software solutions for Internet access devices, switching fabric, and network processors.

11. Plaintiff is the owner of the patent asserted in this action and has the exclusive right to sue and collect remedies for past, present, and future infringement of the patent.

12. Plaintiff assumed all the rights and obligations related to the patent from Modern Telecom Systems, LLC (“MTS-CA”), a California limited liability company, which had assumed all the rights and obligations related to the patent from Glocom Patents Licensing, LLC, which had assumed all the rights and obligations related to the patent from V-Dot Technologies, LLC (formerly, V-Dot Technologies, Limited) (“VDOT”), which had assumed all the rights and obligations related to these patents from Telecom Technology Licensing, LLC (“TTL”), which had assumed all the rights and obligations related to the patent from Mindspeed. Conexant, the assignee identified on

the face of the patent, assigned the patent to Mindspeed in an assignment dated June 27, 2003.

INFRINGEMENT OF U.S. PATENT NO. 6,504,886

13. The allegations set forth in the foregoing paragraphs 1 through 12 are incorporated by reference into this claim for relief.

14. On January 7, 2003, U.S. Patent No. 6,504,886 (“the ‘886 Patent”), entitled “Communication of an Impairment Learning Sequence According to an Impairment Learning Sequence Descriptor,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘886 Patent is attached as Exhibit 1.

15. The ‘886 Patent issued from United States Patent Application No. 09/956,207 (“the ‘207 Application”), filed on September 19, 2001. The ‘207 Application is a Continuation of U.S. Patent Application No. 08/969,971, entitled “Method and Apparatus for Generating a Line Impairment Learning Signal for a Data Communication System,” filed November 13, 1997, now U.S. Patent No. 6,332,009, which is a Continuation-In-Part of U.S. Patent Application No. 08/922,851, entitled “Method and Apparatus for Generating a Programmable Synchronization Signal for a Data Communication System,” filed September 3, 1997, now U.S. Patent No. 6,212,247.

16. Plaintiff is the assignee and owner of the right, title, and interest in and to the ‘886 Patent, including the right to assert all causes of action arising under the ‘886 Patent and the right to any remedies for infringement of the ‘886 Patent.

17. On information and belief, Defendant has infringed and continues to infringe the ‘886 Patent under 35 U.S.C. § 271, literally or under the doctrine of equivalents, by making,

using, selling, and/or offering for sale in the United States, and/or importing into the United States, infringing products without authorization.

18. On information and belief, Defendant directly infringed and continues to directly infringe at least claims 1, 3, 11, 13 and 18¹ of the '886 Patent by making, using, selling, offering to sell, importing and/or providing and causing to be used products within the scope of claims 1, 3, 11, 13 and 18 of the '886 Patent, including, but not limited to, the products with the following designations or trade names: Laptop Computers Inspiron 3000 Series, Laptop Computers Inspiron 5000 Series, Laptop Computers Inspiron 7000 Series, Laptop Computers Inspiron 7000 Gaming Series, XPS Laptops XPS 13, XPS Laptops XPS 15, Laptop Alienware 13, Laptop Alienware 15, Laptop Alienware 17, Chromebook 11, Chromebook 13, Inspiron Desktops, Desktop Inspiron 3000 Series All-In-One, Desktop Inspiron 5000 Series All-In-One, Desktop Inspiron 7000 Series All-In-One, Desktop New XPS Tower, Desktop XPS 27 All-In-One, Desktop Alienware Steam Machine, Alienware Desktops, 2-In-1 Inspiron PCs 3000 Series, 2-In-1 Inspiron PCs 5000 Series, 2-In-1 Inspiron PCs 7000 Series, 2-In-1 XPS 13, Dell Color Printer – C1760nw, Dell Multifunction Printer – E514dw, Dell Multifunction Printer – E515dw, Dell Printer – E310dw, and Dell Cloud Multifunction Printer – H815dw (collectively, examples of “Infringing Instrumentalities”). On information and belief, any other Defendant products that enable Wi-Fi are also Infringing Instrumentalities.

19. As one example of infringement, Defendant's acts of making, using, selling, offering to sell, importing and/or providing and causing to be used Infringing Instrumentalities, includes Defendant's XPS 13 laptop, which satisfies, literally or under the doctrine of

¹ Plaintiff reserves the right to identify additional asserted claims as this litigation proceeds. For example, Plaintiff expressly reserves the right to identify additional asserted claims in its infringement contentions to be served during the discovery process.

equivalents, each and every claim limitation of exemplary claim 18 of the '886 Patent. In particular, the XPS 13 laptop is a communication device capable of communicating a learning sequence descriptor for use in constructing a learning sequence, said device comprising: a transmitter; and a processor in communication with said transmitter; wherein said processor is capable of providing a first parameter, a second parameter and a third parameter to said transmitter capable of transmitting said parameters, wherein said first parameter specifies a number of segments in said learning sequence, said second parameter specifies a sign pattern of each of said segments, and said third parameter specifies a training pattern of each of said segments, wherein said training pattern is indicative of an ordering of a reference symbol and a training symbol in each of said segments. On information and belief, Defendant's XPS 13 laptop includes a Killer 1535 802.11ac WLAN component, see <http://www.dell.com/en-us/shop/productdetails/xps-13-9360-laptop>, and operates pursuant to Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications of IEEE Std 802.11™ -2012 and IEEE Std 802.11™ -2009 (collectively, the relevant "Wi-Fi Standard").

20. In December 2016, Defendant received written notice that its products which enable the Wi-Fi Standard use the '886 Patent. On information and belief, Defendant became aware that its products that are compatible with the Wi-Fi Standard infringe the '886 Patent no later than December 2016.

21. As another example of infringement, Defendant has instructed its customers, including users of its XPS 13 laptop, that its product "provides the strongest and most reliable Wi-Fi connection and was designed specifically to make your online videos, voice and games play faster and smoother." In making these instructions available to customers and touting the benefits of compatibility with the Wi-Fi Standard,

Defendant specifically intended to encourage its customers to use the XPS 13 laptop in an infringing matter, knowing that such use in accordance with its instructions constituted infringement of the '886 Patent. Defendant has thus induced and is inducing its customers to infringe the '886 Patent literally and/or under the doctrine of equivalents. On information and belief, Defendant acted with specific intent to induce its customers to practice the '886 Patent by continuing the above-mentioned activities with knowledge of the '886 Patent.

22. As another example of infringement, Defendant has knowingly contributed to the infringement of the '886 Patent. Defendant is actively, knowingly, and intentionally contributing to the infringement of the '886 Patent by selling, offering to sell, and/or importing into the United States, the XPS 13 laptop, with the knowledge that it is especially designed or adapted to operate in a manner that infringes the '886 Patent, with the knowledge that third parties, will continue to, either alone or in combination with Defendant, infringe the '886 Patent, and with the knowledge that the infringing technology in the Dell XPS 13 laptop is not a staple article of commerce suitable for substantial non-infringing use.

23. Defendant had pre-suit knowledge that it was using the '886 Patent and has knowingly made, used, offered to sell, sold, and/or imported into the United States the Infringing Instrumentalities that infringed and continue to infringe the '886 Patent under 35 U.S.C. § 271. Because Defendant did so with such knowledge of the '886 Patent, Defendant is liable for willful infringement.

24. Defendant's acts of infringement have caused damage to Plaintiff, and Plaintiff is entitled to recover from Defendant the damages it has sustained as a result of Defendant's wrongful acts in an amount subject to proof at trial.

JURY DEMAND

25. Plaintiff requests a jury trial of all issues in this action so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Declaring that Dell has infringed the '886 Patent, contributed to infringement of the '886 Patent, and/or induced infringement of the '886 Patent.
- B. Awarding damages arising out of Dell's infringement of the '886 Patent, including enhanced damages pursuant to 35 U.S.C. § 284, to MTS, together with prejudgment and post-judgment interest, in an amount according to proof.
- C. Awarding attorneys' fees to MTS pursuant to 35 U.S.C. § 285 or as otherwise permitted by law.
- D. Awarding such other costs and further relief as the Court may deem just and proper.

Dated: March 1, 2017

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