

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IRON OAK TECHNOLOGIES, LLC,

Plaintiff,

v.

DELL INC.

Defendant.

CASE NO. 1:17-cv-00999-RP

JURY

SECOND AMENDED COMPLAINT

For its second amended complaint against defendant Dell Inc., plaintiff Iron Oak Technologies, LLC (“Iron Oak”) alleges:

PARTIES

1. Plaintiff Iron Oak is a limited liability company organized under the laws of the State of Texas and has its principal place of business at 3605 Scranton Drive, Richland Hills, Texas, 76118. Iron Oak is a technology development company wholly-owned by prolific inventors William (Bill) C. Kennedy III of Dallas and Kenneth R. Westerlage of Ft. Worth. Mr. Kennedy and/or Mr. Westerlage are named inventors on each of the 22 patents owned by Iron Oak.

2. Dell Inc. is a corporation organized under the laws of the state of Delaware with its principal place of business at 1 Dell Way, Round Rock, Texas 78682. Dell Inc. may be served with process through its registered agent, Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. The contentions in this paragraph will likely have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

NATURE OF ACTION, JURISDICTION AND VENUE

3. This is an action for patent infringement under the Patent Act, 35 U.S.C. § 1 et seq.

4. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (Federal Question) and § 1338 (Patent, Trademark and Unfair Competition).

5. Venue is proper in this district under 28 U.S.C. § 1391(c)(3) and 1400(b) at least because defendant Dell Inc. has committed acts of infringement in this district and has a regular and established place of business in this district at 1 Dell Way, Round Rock, Texas 78682.

FACTS COMMON TO ALL COUNTS

6. Iron Oak is the owner through assignment of U.S. Patent No. 5,699,275 issued December 16, 1997 (“the ‘275 Patent”), which is valid and enforceable. The ‘275 Patent is directed to a system and method for remote patching of operating code located in a mobile unit. A true and correct copy of the ‘275 patent is attached as Exhibit A.

7. Iron Oak is the owner through assignment of U.S. Patent No. 5,966,658 issued October 12, 1999 (the ‘658 Patent”), which is valid and enforceable. The ‘658 Patent is directed to the automated selection of a communication path. A true and correct copy of the ‘658 patent is attached as Exhibit B.

COUNT I

Infringement of the '275 Patent

8. The allegations in the preceding paragraphs of this Complaint are hereby restated and incorporated by reference.

9. Defendant has committed acts of direct patent infringement of the '275 Patent by making, using, selling, offering to sell, and importing products, including but not limited to the products described in Exhibit F ("accused products"), for at least the reasons described therein.

10. In addition to directly infringing the '275 Patent through making, using, selling, offering to sell, and importing the accused products, Defendant has induced others to directly infringe the '275 Patent by using the claimed invention, and reselling the claimed invention. Defendant had knowledge of the '275 at least as early as December May 8, 2014, as shown at least by Exhibit G. Defendant provides instructions and/or assistance to its customers concerning the functionality and how to implement the claimed invention, knowing that these instructions and assistance will be passed on to the ultimate user of the accused products. See Exhibit F. Thus, having knowledge of the claimed inventions, Defendant has provided assistance and instruction to another specifically knowing that following such assistance and/or instructions would infringe the claimed inventions. Defendant sells the accused products to customers in the United States with the expectation and intent that such customers will use and/or resell the accused products thereby directly infringing the '275 Patent. As such, Defendant has induced infringement of the '275 Patent. The allegations in this paragraph are believed to have evidentiary support as set forth herein, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

11. In addition to directly infringing the '275 Patent through making, using, selling, offering to sell, and importing the accused products, Defendant has contributed to the direct infringement of others. By offering to sell and selling one or more of the products identified in Exhibit F, Defendant has offered to sell and has sold a component of the system patented in the '275 Patent, such as in claim 1. Specifically, but without limitation, during the relevant period Defendant has offered to sell and has sold, along with the accused products, a component of software specifically configured to merge an operating code update or patch into existing operation code on the accused product to create updated operating code.

12. The component of software identified above is not presently known to Iron Oak by name or other indicia, but the ability of the accused products to wirelessly receive an operating code update and to update the existing operating code, as well the literature provided by Defendant concerning receiving updates and updating operating code prove the existence of the software component.

13. The identified software component is a material part of the claimed invention at least insofar as all system claims require that the accused products be configured to merge the update or patch with the existing operating code to create patched operating code.

14. Defendant had knowledge of the '275 Patent and Iron Oak's allegations of infringement at least as early as May 8, 2014. See Exhibit G. After that date, Defendant continued to, in association with the accused products, provide the software component, and/or continued to provide instructions and assistance to others concerning how to update or patch operating code on the accused products. Thus, based on Defendant's knowledge of the claims of the '275 Patent, and based on Defendant's knowledge of Iron Oak's particularized allegations of infringement, Defendant knew that the software component was especially made or adapted for

use in infringing the '275 Patent. The allegations in this paragraph are believed to have evidentiary support as set forth herein, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

15. Iron Oak alleges that there is no market for the software component by itself. Iron Oak alleges that there is no market for the software component other than as part of the accused product for updating operating code as set forth the '275 Patent. On information and belief, Iron Oak alleges that the software component is not a staple article or commodity of commerce suitable for non-infringing uses. The allegations in this paragraph are believed to have evidentiary support as set forth herein, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery. Through at least these acts alleged above, Defendant has contributed to the direct infringement of the '275 Patent by users of its accused products in violation of 35 U.S.C. 271(c).

16. Defendant had knowledge of the '275 patent prior to the filing of the Original Complaint in this action, as shown at least by Exhibit G.

17. At all relevant times, Plaintiff has complied with any applicable obligations required by 35 U.S.C. § 287.

18. Defendant's infringement of the '275 patent was willful. Despite knowing of the '275 Patent, Defendant engaged in acts that directly and indirectly infringe the '275 Patent.

19. Iron Oak has been damaged as a result of Defendant's infringing conduct. Defendant is, thus, liable to Iron Oak in an amount that adequately compensates it for which, by law, cannot be less than a reasonable royalty, together with interest and costs, including lost profits, as affixed by this Court under 35 U.S.C. § 284.

COUNT II

Infringement of the '658 Patent

20. The allegations in the preceding paragraphs of this Complaint are hereby restated and incorporated by reference.

21. Defendant has committed acts of direct and indirect patent infringement of the '658 Patent by making, using, selling, offering to sell, and importing products, including but not limited to the products described in Exhibit F ("accused products"), for at least the reasons described therein.

22. In addition to directly infringing the '658 Patent through making, using, selling, offering to sell, and importing the accused products, Defendant has induced others to directly infringe the '658 Patent by using the claimed invention, and reselling the claimed invention. Defendant had knowledge of the '658 at least as early as May 8, 2014, as shown at least by Exhibit G. Defendant provides instructions and/or assistance to its customers concerning the functionality and how to implement the claimed invention, knowing that these instructions and assistance will be passed on to the ultimate user of the accused products. See Exhibit F. Thus, having knowledge of the claimed inventions, Defendant has provided assistance and instruction to another specifically knowing that following such assistance and/or instructions would infringe the claimed inventions. Defendant sells the accused products to customers in the United States with the expectation and intent that such customers will use and/or resell the accused products thereby directly infringing the '658 Patent. As such, Defendant has induced infringement of the '658 Patent. The allegations in this paragraph are believed to have evidentiary support as set forth herein, and likely will have additional evidentiary support after a reasonable opportunity for further investigation or discovery.

23. Defendant had knowledge of the '658 patent prior to the filing of the Original Complaint in this action, as shown at least by Exhibit G.

24. At all relevant times, Plaintiff has complied with any applicable obligations required by 35 U.S.C. § 287.

25. Defendant's infringement of the '658 patent was willful. Despite knowing of the '658 Patent, Defendant engaged in acts that infringe the '658 Patent.

26. Iron Oak has been damaged as a result of Defendant's infringing conduct. Defendant is, thus, liable to Iron Oak in an amount that adequately compensates it for, which, by law, cannot be less than a reasonable royalty, together with interest and costs, including lost profits, as affixed by this Court under 35 U.S.C. § 284.

PRAYER

WHEREFORE, Iron Oak requests judgment against Defendant as follows:

1. An award of damages, increased as deemed appropriate by the court, under 35 U.S.C. § 284;
2. An award of attorneys' fees under 35 U.S.C. § 285;
3. An award of prejudgment interest and costs of the action; and
4. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

April 18, 2018

Respectfully submitted,

Respectfully submitted,

/s/ Al Deaver

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CERTIFICATE OF SERVICE

I certify that on February April 18, 2018, a true and correct copy of this document was served on counsel of record via electronic mail in accordance with the Western District of Texas Procedures for Electronic Filing.

/s/ Al Deaver _____