

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ACCELERON, LLC,

Plaintiff,

v.

DELL, INC.,

Defendant.

Civil Action File No.

1:12-cv-04123-TCB

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff Acceleron, LLC (“Acceleron”) states its First Amended Complaint against Defendant Dell, Inc. (“Defendant” or “Dell”) as follows:

INTRODUCTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code to enjoin infringement and obtain damages from Defendant’s unauthorized manufacture, use, sale, offer to sell, and/or importation into the United States for the subsequent use or sale of products or methods that directly or indirectly infringe one or more claims of U.S. Patent No. 6,948,021, entitled “Cluster Component Network Alliance System and Method for Enhancing Fault Tolerance and Hot-Swapping” (hereinafter “the ‘021 patent”), which is owned by Acceleron.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

3. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§1391(b) and (c) and 1400(b) in that, upon information and belief, Defendant has done business in this District, has committed acts of infringement in this District, and continues to commit acts of infringement in this District, thus entitling Acceleron to relief.

4. Upon information and belief, the Court has personal jurisdiction over Dell due to Dell's contacts within the State of Georgia arising from Dell transacting and/or having transacted business in this judicial district by among other things, offering its products and/or services to customers, affiliates, partners, and/or retailers in this judicial district. Dell, therefore, has continuous and systematic contacts within this judicial district by way of such transactions and occurrences or has established sufficient minimum contacts with Georgia for this Court to have personal jurisdiction over Dell.

5. Upon information and belief, Defendant may be served this Complaint via its registered agent: Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, DE 19808.

PARTIES

6. Acceleron is a Delaware limited liability company having its principal place of business at 3350 Riverwood Parkway, Suite 800, Atlanta, Georgia 30339.

7. Acceleron is the owner, by assignment, of all right, title, and interest in and to the '021 patent, including the right to bring suit for patent infringement.

8. Upon information and belief, Defendant is a Delaware corporation with its principal place of business at 1 Dell Way, Round Rock, Texas 78664.

INFRINGEMENT OF THE '021 PATENT

9. Acceleron is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 6,948,021, which issued from the United States Patent and Trademark Office on September 20, 2005. A true and correct copy of the '021 patent is attached hereto as Exhibit A.

10. Upon information and belief, Defendant Dell makes, uses, sells, offers for sale, and/or imports one or more computer network appliances and/or related methods, including but not limited to products known as Dell's blade enclosures, Dell's blade servers and Dell's associated modules. Dell's blade enclosures, which

include a chassis (as claimed in claim 3 of the '021 patent via intervening claim 2) that provides physical support for components therein, include without limitation the following: Dell's FX2 Blade Enclosure, Dell's PowerEdge M1000e Blade Enclosure, Dell's VRTX Blade Enclosure, Dell's 1855 Blade Enclosure, and Dell's 1955 Blade Enclosure. The chassis include a midplane, or backplane board (as claimed in claim 3 of the '021 patent via base claim 1) with a number of hot-swappable mating connectors, that interconnects the blade servers, power supplies, and ethernet switch modules in the chassis and is used as a shared resource. Dell's hot-swappable blade servers include caddies that provide airflow from the front to the reach of the chassis and that carry CPU modules that include a stand-alone independently-functioning computer and are inserted into the chassis (as claimed in claim 3 of the '021 patent). Dell's hot-swappable blade servers (as claimed in claim 3 of the '021 patent via base claim 1) include without limitation the following: M420, M520, M600, M605, M610, M610x, M620, M710, M710HD, M805, M820, M910, M905, M915. Dell's associated modules include without limitation hot-swappable power supply modules, hot-swappable ethernet switch modules, and CMC modules (that remotely poll via a dedicated communication path the blade servers, power modules, and ethernet switch modules) (as claimed in claim 3 of the '021 patent via base claim 1). To create a functional accused

blade server system, such as one described above that infringes at least claim 3 of the '021 patent, Dell and/or Dell's client can combine an accused Dell blade enclosure, at least one accused Dell blade server, and at least one accused power supply module, I/O module, and CMC module. Exhibit B herewith is an excerpt of Acceleron's infringement contentions further describing the above and is hereby incorporated by reference.

11. On or around September 18, 2007, Acceleron sent Dell an initial letter providing notice of the '021 Patent and notice of Dell's infringing conduct. Dell responded to that letter on or around September 26, 2007.

12. On or around October 5, 2007, Acceleron sent Dell a second letter providing notice of the '021 Patent and notice of Dell's infringing conduct. On information and belief, Dell did not respond to Acceleron's second letter.

COUNT ONE:
DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,948,021

13. Acceleron re-alleges and incorporates herein the allegations of paragraphs 1 through 12 of this First Amended Complaint as if fully set forth herein.

14. Defendant's infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of Dell's accused blade

server systems consisting of an enclosure with associated blade servers and modules, including but not limited to those identified in paragraph 10 above.

15. By providing an enclosure (*e.g.*, a chassis having a midplane) with at least one blade server (having a CPU module) and associated modules (including a power supply module and an ethernet switch module), the accused blade server systems provided by Dell meet each and every limitation of at least claims 3, 14-17, 20, 22-24, and 34-36 of the '021 Patent. Acceleron incorporates by reference its infringement contentions, which demonstrate how every limitation of every asserted claim is met by the accused blade server systems.

16. Upon information and belief, Defendant's infringement is willful.

17. Upon information and belief, Acceleron has been irreparably harmed by Defendant's infringements of Acceleron's patent rights.

18. Defendant's unauthorized and infringing uses of Acceleron's '021 patent have threatened the value of this intellectual property because Defendant's conduct results in loss of Acceleron's lawful patent rights to exclude others from making, using, selling, offering to sell and/or importing the patented invention.

19. The acts of infringement of the '021 patent by Defendant have caused damage to Acceleron, and Acceleron is entitled to recover from Defendant the

damages sustained by Acceleron as a result of Defendant's wrongful acts in an amount subject to proof at trial.

20. The infringement of Acceleron's exclusive rights under the '021 patent by Defendant will continue to damage Acceleron, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT TWO:
INDIRECT INFRINGEMENT OF U.S. PATENT NO. 6,948,021

21. Acceleron re-alleges and incorporates herein the allegations of paragraphs 1 through 20 of this First Amended Complaint as if fully set forth herein.

22. Dell has had knowledge of the '021 patent since at least September 2007, when Acceleron provided Dell notice of the patent and of the infringement.

23. Through discovery, Acceleron has learned that Dell sells some portion of its blade enclosures, blade servers, and associated modules separately from each other, rather than as a complete system.

24. Through discovery, Acceleron has learned that when Dell sells a blade enclosure, a blade server, or associated modules separate and apart from a complete accused Dell blade server system, Dell provides specific instructions via its instruction manuals and other materials to its customers regarding how to combine the blade enclosure, blade server, and associated modules to form a

complete accused blade server system. Dell's customers then combine the blade enclosure, blade server, and associated modules as instructed so as to form a functional accused blade server system.

25. When combined by Dell's customers as Dell instructs, the blade enclosures, blade servers, and associated modules directly infringe at least claims 3, 14-17, 20, 22-24, and 34-36 of the '021 patent. Acceleron incorporates by reference its infringement contentions, which demonstrate how every limitation of every asserted claim is met by the accused products.

26. Accordingly, Dell indirectly infringes the '021 patent by inducing infringement of the '021 patent, pursuant to 35 U.S.C. § 271(b).

COUNT THREE:
CONTRIBUTORY INFRINGEMENT OF U.S. PATENT NO. 6,948,021

27. Acceleron re-alleges and incorporates herein the allegations of paragraphs 1 through 26 of this First Amended Complaint as if fully set forth herein.

28. Dell has had knowledge of the '021 patent since at least September 2007, when Acceleron provided Dell notice of the patent and of the infringement.

29. Through discovery, Acceleron has learned that Dell sells some portion of its blade enclosures, blade servers, and associated modules separately from each other, rather than as a functional blade server system.

30. Blade enclosures, blade servers, and associated modules are essential to practicing the invention of the '021 patent, because the claimed system of the '021 patent does not operate without a midplane board (included in a Dell enclosure), a CPU module (included in a Dell blade server), and associated power supply, ethernet switch, and microcontroller modules (all also supplied by Dell).

31. Through discovery, Accelaron has learned that the accused blade enclosures, blade servers, and associated modules have no substantial non-infringing use(s), because the accused blade enclosures, blade servers, and associated modules are designed such that they are only functional if used in combination. Dell's customers that obtain only a blade enclosure, blade server, or associated module must combine the obtained component with the other required components to form a functional blade server system.

32. Through discovery, Accelaron has learned that the accused blade enclosures, blade servers, and associated modules are not compatible with any other systems or products that are not accused of infringement.

33. When combined by the customer as Dell instructs, the blade enclosures, blade servers, and associated modules directly infringe at least claims 3, 14-17, 20, 22-24, and 34-36 of the '021 patent. Accelaron incorporates by

reference its infringement contentions, which demonstrate how every limitation of every asserted claim is met by the combined Dell blade server system.

34. Dell is aware that the blade enclosures, blade servers, and associated modules are especially made or especially adapted for use in infringement of the '021 patent, in that the components of a Dell blade server system can only be used in a manner that infringes the '021 patent.

35. Accordingly, Dell indirectly infringes the '021 patent by contributing to infringement of the '021 patent, pursuant to 35 U.S.C. § 271(c).

COUNT FOUR:
INFRINGEMENT OF U.S. PATENT NO. 6,948,021
UNDER 35 U.S.C. § 271(f)

36. Accelaron re-alleges and incorporates herein the allegations of paragraphs 1 through 35 of this First Amended Complaint as if fully set forth herein.

37. Through discovery, Accelaron has learned that Dell may supply or cause to be supplied in or from the United States all or a substantial portion of the invention patented in the '021 patent, in the form of components that are uncombined in whole or in part, in such manner as to actively induce direct infringement of the '021 patent when such components are combined outside of

the United States in a manner that would directly infringe the '021 patent if it occurred within the United States.

38. Specifically, Dell may supply or cause to be supplied from the United States uncombined blade enclosures, blade servers, and associated modules, with instructions that the blade enclosures, blade servers, and associated modules must be combined upon receipt to form a functional blade server system, which would thereby infringe the '021 patent if such combination occurred in the United States.

39. Through discovery, Acceleron has learned that Dell may supply or cause to be supplied from the United States a component of the invention patented in the '021 patent that is especially made or especially adapted for use in the invention and not a staple article or commodity of commerce suitable for substantial noninfringing use, where such component is uncombined in whole or in part, knowing that such component is so made or adapted and intending that such component will be combined outside of the United States in a manner that would infringe the '021 patent if such combination occurred within the United States.

40. Specifically, Acceleron has learned that Dell may supply or cause to be supplied from the United States accused blade enclosures, blade servers, or associated modules, intending for such individual components to be combined with other components to form a functional blade server system in a manner that would

directly infringe the '021 patent if such combination occurred within the United States.

41. Additionally, the accused blade enclosures, blade servers, and associated modules have no substantial non-infringing use, because the accused blade enclosures, blade servers, and associated modules are designed such that they can only be functional if used in combination with each other. The blade enclosures, blade servers, and associated modules are also designed such that specific models can only be used together. The blade enclosures, blade servers, and associated modules cannot be used with non-infringing systems.

42. When combined by the customer as instructed by Dell, the blade enclosures, blade servers, and associated modules infringe at least claims 3, 14-17, 20, 22-24, and 34-36 of the '021 patent. Accelaron incorporates by reference its infringement contentions, which demonstrate how every limitation of every asserted claim is met by the accused products.

43. Accordingly, Dell infringes the '021 patent pursuant to 35 U.S.C. § 271(f)(1) & (f)(2).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Accelaron prays that the Court enter judgment in its favor and against Defendant as follows:

- A. That the Court enter judgment of infringement against Defendant;
- B. That Defendant be ordered to pay damages adequate to compensate Acceleron for its acts of infringement, pursuant to 35 U.S.C. § 284;
- C. That Acceleron be awarded increased damages under 35 U.S.C. § 284 due to Defendant's willful infringement of the '021 patent;
- D. That the Court find that this case is exceptional and award Acceleron its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- E. That Defendant, its officers, agents, employees, and those acting in privity with it, be permanently enjoined from further infringement, contributory infringement, and/or inducing infringement of the patent-in-suit, pursuant to 35 U.S.C. § 283;
- F. That Defendant be ordered to pay prejudgment and post-judgment interest;
- G. That Defendant be ordered to pay all costs associated with this action; and
- H. That Acceleron be granted such other and additional relief as the Court deems just, equitable, and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Acceleron, LLC demands a trial by jury of all issues triable of right by a jury.

This 23rd day of August, 2018.

/s/ N. Andrew Crain

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2018, the foregoing was filed using the Court's ECF system, which will automatically send electronic notice of such filing to all attorneys of record.

/s/ N. Andrew Crain

N. Andrew Crain

Georgia Bar No. 193081

Attorney for Plaintiff Acceleron, LLC