IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IRON OAK TECHNOLOGIES, LLC, Plaintiff,	§	CIVIL ACTION NO. 3-18-cv-01542
v.	§	JURY TRIAL DEMANDED
DELL INC. Defendant,	§	
MICROSOFT CORPORATION, Intervenor.	§	

MICROSOFT CORPORATION'S FIRST AMENDED COMPLAINT IN INTERVENTION

For its First Amended Complaint in Intervention against Plaintiffs Iron Oak Technologies, LLC ("Iron Oak"), Intervenor Microsoft Corporation ("Microsoft") hereby alleges on personal knowledge as to its own activities and on information and belief as to the activities of others as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment that Microsoft, through its actions or through the normal, advertised and expected use of its products, services or technology, has not infringed, induced others to infringe, or contributed to the infringement by others of any claim of United States Patent Nos. 5,699,275 ("the '275 Patent") and 5,966,658 ("the '658 Patent") (collectively, "the Patents-in-Suit"). This relief is necessary because Iron Oak has accused Microsoft of infringing the '275 Patent and the '658 Patent and demanded that Microsoft license those patents. Further, Iron Oak has sued third parties, including HP, Inc. and Dell, Inc., alleging that they infringe the '275 Patent and/or the '658 Patent in reliance on Microsoft products, services and technology under Iron Oak's infringement theories. Iron Oak's claims and references to

Microsoft software have placed a cloud over Microsoft and its products, have injured and are injuring Microsoft's business and business relationships, and have created a concrete and immediate justiciable controversy between Microsoft and Iron Oak.

2. On June 14, 2018, the Judicial Panel on Multidistrict Litigation transferred this case to this Court from the United States for the Western District of Texas. On July 26, 2018, Iron Oak filed amended complaints against Dell and other consolidated defendants. *See, Iron Oak Techs. LLC v. Dell Inc*., 3-18-cv-01542 (N.D. Tex) at Dkt. 75. Iron Oak maintains its claims and references to Microsoft software in its amended complaints.

PARTIES

3. Microsoft is a corporation organized under the laws of the State of Washington with its principal place of business at One Microsoft Way, Redmond, Washington 98052.

4. Iron Oak claims to be a limited liability company organized under the laws of the State of Texas with its principal place of business at 3605 Scranton Drive, Richland Hills, Texas 76118.

JURISDICTION AND VENUE

5. This action arises under the United States patent laws and includes a request for declaratory relief under 28 U.S.C. §§ 2201 and 2202.

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331, 1338, and 2201, and 35 U.S.C. § 1, et seq.

7. Iron Oak is subject to personal jurisdiction in this judicial district. Iron Oak is a Texas limited liability company with its primary place of business located within this district, and it has sufficient business or contacts within the State of Texas to justify jurisdiction under the United States Constitution and the Texas Long Arm Statute.

8. Iron Oak did not oppose transfer to this Court, where seven of the twelve consolidated actions were pending. Accordingly, venue is proper under 28 U.S.C. § 1391 and 28 U.S.C. § 1400.

EXISTENCE OF AN ACTUAL CONTROVERSY

9. Microsoft re-alleges and incorporates by reference each of Paragraphs 1-8 above.

10. An actual controversy exists within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

11. Iron Oak purports to be the current owner of the ’275 Patent, entitled “System and Method for Remote Patching of Operating Code Located in a Mobile Unit.” A copy of the ’275 Patent is attached hereto as Exhibit A.

12. Iron Oak purports to be the current owner of the ’658 Patent, entitled “Automated Selection of a Communication Path.” A copy of the ’658 Patent is attached hereto as Exhibit B.

13. On May 12, 2017, after the expiration of the ‘275 and ‘658 patents, Iron Oak sent a letter to Microsoft alleging that Microsoft has infringed one or more claims the ’275 Patent and the ’658 Patent. A copy of this letter is attached as Exhibit C.

14. In its letter, Iron Oak states:

> Based on our review of [Microsoft’s] products and services, we have concluded that your company has likely practiced the claimed subject matter of several of Iron Oak’s [patents] during the enforceable term of those patents and, therefore, requires a license or release under those patents.
>
> . . .
>
> If Microsoft is interested in trying to reach an agreement concerning Iron Oak’s portfolio, time is of the essence. Iron Oak has recently initiated actions against Acer, Asus, Toshiba, Fujitsu, Lenovo, and Samsung for infringement of patents in Iron Oak’s portfolio.”

15. On October 18, 2017, Iron Oak filed an original complaint in the Western District of Texas alleging infringement of the '275 and '658 Patents against Dell Inc. ("Dell"). *See Iron Oak Technologies, LLC v. Dell Inc.*, Case No. 1:17-cv-999 (W.D. Tex., Austin Division) ("Western District Action"). On January 17, 2018, Iron Oak filed an amended complaint in the Western District Action. On April 18, 2018, Iron Oak filed a second amended complaint in the Western District Action. On July 26, 2018, Iron Oak filed a third amended complaint in this action.

16. In its complaint against Dell, Iron Oak included claim charts purporting to support its infringement theories and referencing Microsoft's products, services and technology, including Automatic Update and automatic network connection features. Copies of these claim charts are attached as Exhibits D and E.

17. Microsoft denies that it or its products have infringed, induced others to infringe or contributed to the infringement by others of any claim of the Patents-in-Suit.

18. Iron Oak's claims and allegations have placed a cloud over Microsoft and its products, have injured and are injuring Microsoft's business and business relationships, and have created a concrete and immediate justiciable controversy between Microsoft and Iron Oak conferring jurisdiction upon this Court pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

COUNT I:
DECLARATORY JUDGMENT OF NONINFRINGEMENT OF U.S. PATENT NO. 5,699,275

19. Microsoft re-alleges and incorporates the allegations of Paragraphs 1-18 as if set forth herein in their entirety.

20. Neither Microsoft nor its products, services or technology have infringed, directly or indirectly, any claim of the '275 Patent.

21. None of Microsoft's customers, including Defendants, infringe any claim of

the ’275 Patent, directly or indirectly, in any way involving the functionality or operation of Microsoft’s products, services and technology, including Automatic Update and automatic network connection features.

22. An actual controversy exists between Microsoft and Iron Oak with respect to whether Microsoft infringes any claim of the ’275 Patent.

23. Microsoft seeks a declaration that it does not infringe any claim of the ’275 Patent.

COUNT II:
DECLARATORY JUDGMENT OF NONINFRINGEMENT OF U.S. PATENT NO. 5,966,658

24. Microsoft re-alleges and incorporates the allegations of Paragraphs 1-23 as if set forth herein in their entirety.

25. Neither Microsoft nor its products, services or technology have infringed, directly or indirectly, any claim of the ’658 Patent.

26. None of Microsoft’s customers, including Defendants, infringe any claim of the ’658 Patent, directly or indirectly, in any way involving the functionality or operation of Microsoft’s products, services and technology, including Automatic Update and automatic network connection features.

27. An actual controversy exists between Microsoft and Iron Oak with respect to whether Microsoft infringes any claim of the ’658 Patent.

28. Microsoft seeks a declaration that it does not infringe any claim of the ’658 Patent.

PRAYER FOR RELIEF

WHEREFORE, Microsoft prays for an Order and entry of Judgment against Iron Oak as follows:

A. Declaring that Microsoft does not infringe, directly or indirectly, the '275 Patent;

B. Declaring that Microsoft does not infringe, directly or indirectly, the '658 Patent;

C. Declaring that no Microsoft customer infringes, directly or indirectly, the '275 Patent;

D. Declaring that no Microsoft customer infringes, directly or indirectly, the '658 Patent;

E. Declaring the case exceptional under 35 U.S.C. § 285 and awarding Microsoft its reasonable attorneys' fees in this action;

F. Awarding Microsoft its costs and expenses in this action; and

G. Granting such other and further relief as the Court deems proper and just.

DEMAND FOR JURY TRIAL

Microsoft, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: August 27, 2018

Respectfully submitted,

/s/ *Kelley A. Conaty*

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ATTORNEYS FOR INTERVENOR
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CERTIFICATE OF SERVICE

I certify that on August 27, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ *Kelley A. Conaty*
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