

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

DATA CLOUD TECHNOLOGIES, LLC,

Plaintiff,

v.

1&1 IONOS INC.,

Defendant.

CIVIL ACTION NO. _____

JURY TRIAL DEMANDED

ORIGINAL COMPLAINT

Plaintiff DataCloud Technologies, LLC (hereinafter, “Plaintiff” or “DataCloud”), by and through its undersigned counsel, files this Complaint for Patent Infringement against Defendant 1&1 IONOS INC. (hereinafter, “Defendant” or “Ionos”) as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of the following United States Patents (collectively, the “Patents-in-Suit”), copies of which are attached hereto as **Exhibit A**, **Exhibit B**, **Exhibit C**, and **Exhibit D**, respectively:

	U.S. Patent No.	Title
A.	6,560,613	Disambiguating File Descriptors
B.	6,651,063	Data Organization And Management System And Method
C.	8,607,139	System And Process For Managing Content Organized In A Tag-Delimited Template Using Metadata
D.	8,762,498	Apparatus, System, And Method For Communicating To A Network Through A Virtual Domain

2. Plaintiff seeks injunctive relief and monetary damages.

PARTIES

3. DataCloud is a limited liability company organized and existing under the laws of

the State of Georgia and maintains its principal place of business at 44 Milton Avenue, Suite 254, Alpharetta, Georgia, 30009 (Fulton County).

4. Based upon public information, 1&1 IONOS INC. is a corporation duly organized and existing under the laws of the state of Delaware since at May 14, 2003.

5. Based upon public information, Ionos has its principal place of business located at 701 Lee Road, Suite 300, Chesterbrook, Pennsylvania 19087 (Chester County).

6. Defendant may be served through its registered agent, The Corporation Trust Company at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware, 19801.

JURISDICTION AND VENUE

7. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

8. The Court has personal jurisdiction over Ionos because: Defendant has minimum contacts within the State of Delaware and in this District; Defendant has purposefully availed itself of the privileges of conducting business in the State of Delaware and in this District; Defendant has sought protection and benefit from the laws of the State of Delaware and is incorporated there; Defendant regularly conducts business within the State of Delaware and within this District, and Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Delaware and in this District.

9. More specifically, Ionos, directly and/or through its intermediaries, ships, distributes, makes, uses, imports, offers for sale, sells, and/or advertises its products and services in the United States, the State of Delaware, and in this District.

10. Based upon public information, Ionos solicits customers in the State of Delaware and in this District and has many paying customers who are residents of the State of Delaware and

this District and who use its products in the State of Delaware and in this District. Ionos is also incorporated in the State of Delaware and in this District.

11. Venue is proper pursuant to 28 U.S.C. § 1400(b) because Ionos resides in the District of Delaware because of its formation under the laws of Delaware.

12. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c) because Ionos resides in the District of Delaware because of its formation under the laws of Delaware, which subjects it to the personal jurisdiction of this Court.

BACKGROUND INFORMATION

13. The Patents-in-Suit were duly and legally issued by the United States Patent and Trademark Office (hereinafter, the “USPTO”) after full and fair examinations.

14. Plaintiff is the owner of the Patents-in-Suit, and possesses all right, title and interest in the Patents-in-Suit including the right to enforce the Patents-in-Suit, the right to license the Patents-in-Suit, and the right to sue Defendant for infringement and recover past damages.

15. Plaintiff has at all times complied with the marking provisions of 35 U.S.C. § 287 with respect to the Patents-in-Suit.

16. Plaintiff does not sell, offer to sell, make, or use any products itself, so it does not have any obligation to mark any of its own products under 35 U.S.C. § 287.

17. By letter dated April 16, 2020, DataCloud’s licensing agent sent Defendant a letter in which it identified DataCloud’s patent portfolio, which includes each of the Patents-in-Suit. *See Exhibit E-1* (hereinafter, the “First Notice Letter”). By letter dated July 14, 2020, DataCloud’s counsel sent Defendant a letter in which it identified Defendant’s products that are infringed by the Patents-in-Suit, including charts showing that infringement. *See Exhibit E-2* (hereinafter, the “Second Notice Letter”).

DEFENDANT’S PRODUCTS AND SERVICES

18. Based upon public information, Ionos owns, operates, advertises, and/or controls the website www.ionos.com through which it advertises, sells, offers to sell, provides and/or educates customers about its products and services. *See* **Exhibit F**.

19. Based upon public information, Defendant provides sales information, training and educational information, for its products. *See* **Exhibit G**.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 6,560,613

20. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

21. U.S. Patent No. 6,560,613 (hereinafter, the “’613 Patent”), was issued on May 6, 2003 after full and fair examination by the USPTO of Application No. 09/500,212 which was filed on February 8, 2000. *See* Ex. A. A Certificate of Correction was issued on August 26, 2003. *See id.*

22. Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the ’613 Patent, either literally or under the doctrine of equivalents, because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises its “Cloud Servers” that employ VMWare (hereinafter, “Cloud Servers”). *See* **Exhibit H-1, Exhibit H-2**.

23. Upon information and belief, Cloud Servers meet each and every element of at least Claim 1 of the ’613 Patent, either literally or equivalently.

24. Based upon public information, Cloud Servers have infringed one or more claims of the ’613 Patent, including Claim 1, because it provides a method for disambiguating file descriptors in a computer system through a process which intercepts the system calls that identify file descriptors and the system calls that create copies of one or more file descriptors, stores one or more file type indicators for each file descriptor and each file descriptor copy, and upon an

attempt to access a file based upon a file descriptor, determines what file type is associated with the file descriptor based on a review of the stored file type indicators. Cloud Servers employ disambiguation of file descriptors (files/sockets/pipes) that are used in shadowed I/O system call routines by intercepting them, storing related indicators (*e.g.*, reference to images), and examining those stored indicators to determine the associated file type.

25. To the extent that Defendant is not the only direct infringer of one or more claims of the '613 Patent, it instructs its customers on how to use Cloud Servers in ways that infringe one or more claims of the '613 Patent through its support and sales activities. *See* Ex. G.

26. Based upon public information, Defendant's customers use its Cloud Servers in such a way that infringes one or more claims of the '613 Patent. *See* **Exhibit H-3**.

27. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

28. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts with respect to the '613 Patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II: INFRINGEMENT OF U.S. PATENT NO. 6,651,063

29. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

30. U.S. Patent No. 6,651,063 (hereinafter, the "'063 Patent"), was issued on November 18, 2003 after full and fair examination by the USPTO of Application No. 09/493,911 which was filed on January 28, 2000. *See* Ex. B. A Certificate of Correction was issued on February 3, 2004. *See id.*

31. Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '063 Patent, either literally or under the doctrine of

equivalents, because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises its “1&1” Android applications to, among other things, monitor websites, provide to a mobile email platform, and to “access your IONOS products at any time from anywhere” (hereinafter, “Ionos Apps”). *See Exhibit I-1, Exhibit I-2, and Exhibit I-3.*

32. Upon information and belief, the Ionos Apps meet each and every element of at least Claim 4 of the ’063 Patent, either literally or equivalently.

33. Based upon public information, Ionos Apps have infringed and continue to infringe one or more claims of the ’063 Patent, including Claim 4, because they provide a system of hardware and software to allow its customers to, among other things, “use and manage your IONOS products from your mobile device.” *See Ex. I-3.*

34. To the extent that Defendant is not the only direct infringer of one or more claims of the ’063 Patent, it instructs its customers on how to use the Ionos Apps in ways that infringe one or more claims of the ’063 Patent through its support and sales activities. *See Ex. G.*

35. Defendant’s aforesaid activities have been without authority and/or license from Plaintiff.

36. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant’s wrongful acts with respect to the ’063 Patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT III: INFRINGEMENT OF U.S. PATENT NO. 8,607,139

37. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

38. U.S. Patent No. 8,607,139 (hereinafter, the “’139 Patent”), was issued December 10, 2013 after full and fair examination by the USPTO of Application No. 10/834,595 which was filed on April 29, 2004. *See Ex. C.* A Certificate of Correction was issued on June 24, 2014. *See*

id.

39. Based upon public information, Plaintiff is informed and believes that Defendant has infringed and continues to infringe one or more claims of the '139 Patent, either literally or under the doctrine of equivalents, because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises its Ionos Website Builder Tool which provides a system to allow its customers the ability to “[c]reate a professional-looking website in minutes with MyWebsite Now” (hereinafter, “Ionos Website Builder Tool”) *See Exhibit J-1.*

40. Upon information and belief, the Ionos Website Builder Tool meets each and every element of at least Claim 1 of the '139 Patent, either literally or equivalently.

41. Based upon public information, the Ionos Website Builder Tool has infringed one or more claims of the '139 Patent, including Claim 1, because it provides a system of hardware and software with a content management module to display a webpage that accepts data and is generated from a template that is created based on the nature of the data to be input. *See Exhibit J-2.*

42. To the extent that Defendant is not the only direct infringer of one or more claims of the '139 Patent, it instructs its customers on how to use the Ionos Website Builder Tool in ways that infringe one or more claims of the '139 Patent through its support and sales activities. *See Ex. G.*

43. Based upon public information, Defendant's customers use its products and services in such a way that infringes one or more claims of the '139 Patent. *See Exhibit J-3.*

44. Based upon public information, Defendant has intentionally induced and continues to induce infringement of one or more claims of the '139 Patent in this District and elsewhere in the United States, by its intentional acts which have successfully, among other things, encouraged,

instructed, enabled, and otherwise caused Defendant's customers to use the Ionos Website Builder Tool in an infringing manner. *See* Ex. F, Ex. G.

45. Despite knowledge of the '139 Patent as early as the date of its receipt of the Notice Letter (*see* Ex. E), Defendant, based upon public information, continues to encourage, instruct, enable, and otherwise cause its customers to use its products and services, in a manner which infringes one or more claims of the '139 Patent. Based upon public information, the provision of and sale of the Ionos Website Builder Tool is a source of revenue and a business focus for Defendant. *See* Ex. F.

46. Based upon public information, Defendant specifically intends its customers to use its products and services in such a way that infringes one or more claims of the '139 Patent by, at a minimum, providing and supporting the Ionos Website Builder Tool and instructing its customers on how to use them in an infringing manner, at least through information available on Defendant's website including information brochures, promotional material, and contact information. *See* Ex. G.

47. Specifically, Defendant offers design services to select, deploy and integrate the Ionos Website Builder Tool into its customers' systems. Based upon public information, Defendant knew that its actions, including, but not limited to any of the aforementioned products and services, would induce, have induced, and will continue to induce infringement by its customers by continuing to sell, support, and instruct its customers on using the Ionos Website Builder Tool.

48. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

49. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as

a result of Defendant's wrongful acts with respect to the '139 Patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT IV: INFRINGEMENT OF U.S. PATENT NO. 8,762,498

50. Plaintiff re-alleges and incorporates by reference each of the paragraphs above.

51. U.S. Patent No. 8,762,498 (hereinafter, the "'498 Patent"), was issued on June 24, 2014 after full and fair examination by the USPTO of Application No. 13/731,731 which was filed on December 31, 2012. *See* Ex. D.

52. Based upon public information, Plaintiff is informed and believes that Defendant has infringed one or more claims of the '498 Patent, either literally or under the doctrine of equivalents, because it ships distributes, makes, uses, imports, offers for sale, sells, and/or advertises its Ionos Website Hosting service which provides "[f]ast, secure hosting that's ready to grow" (hereinafter, "Ionos Website Hosting") *See Exhibit K*.

53. Upon information and belief, the Ionos Website Hosting service meets each and every element of at least Claim 1 of the '498 Patent, either literally or equivalently.

54. Based upon public information, the Ionos Website Hosting service has infringed one or more claims of the '498 Patent, including Claim 1, because it provides a system of hardware and software that is configured to respond to a request for data by identifying a virtual namespace destination IP address (*e.g.*, www.ionos.com) from a selection of categories that is related to the virtual namespace destination address (*e.g.*, the category of "ionos.com" is related to the virtual namespace destination address of "www.ionos.com") to determine a device with a specific forwarder IP address and instruct it to send the request for data to the destination IP address.

55. To the extent that Defendant is not the only direct infringer of one or more claims of the '498 Patent, it instructs its customers on how to use the Website Hosting service in ways

that infringe one or more claims of the '498 Patent through its support and sales activities. *See* Ex. G.

56. Based upon public information, Defendant's customers use its products and services in such a way that infringes one or more claims of the '498 Patent. *See* Ex. K.

57. Defendant's aforesaid activities have been without authority and/or license from Plaintiff.

58. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts with respect to the '498 Patent in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

59. Plaintiff demands a trial by jury on all issues.

PRAYER FOR RELIEF

60. Plaintiff respectfully requests the following relief:

- A. An adjudication that one or more claims of the Patents-in-Suit has been infringed, either literally and/or under the doctrine of equivalents, by Ionos;
- B. An adjudication that Ionos has induced infringement of one or more claims of the Patents-in-Suit based upon pre-suit knowledge of the Patents-in-Suit;
- C. An award of damages to be paid by Ionos adequate to compensate Plaintiff for Ionos' past infringement, including interest, costs, and disbursements as justified under 35 U.S.C. § 284 and, if necessary to adequately compensate Plaintiff for Ionos' infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;
- D. That this Court declare this to be an exceptional case and award Plaintiff its

reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and,

E. Any further relief that this Court deems just and proper.

Dated: September 29, 2020

Respectfully submitted,

Stamoulis & Weinblatt, LLC

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LIST OF EXHIBITS

A. U.S. Patent No. 6,560,613

B. U.S. Patent No. 6,651,063

C. U.S. Patent No. 8,607,139

D. U.S. Patent No. 8,762,498

E. (1) Letter dated April 16, 2020 from DataCloud's Licensing Agent and (2) Letter dated July 14, 2020 from DataCloud's counsel

F. Website: www.ionos.com

G. Website: www.ionos.com/help

H. (1) Webpage: Cloud Servers from Ionos by 1&1 (2) Webpage: "VMware Tools for Cloud Servers" (3) Webpage: "Customer References" for "Ionos by 1&1 Enterprise Cloud"

I. (1) Webpage: "The IONOS world at your fingertips" (2) 1&1 Mail & Media mail.com App Available on Google Play (3) 1&1 Ionos SE App Available on Google Play

J. (1) Webpage: Ionos Website Builder Tool (2) Webpage: Ionos Website Templates (3) Webpage: Ionos Website Examples

K. Webpage: Ionos Web Hosting