

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

<p>Orbit Licensing LLC, Plaintiff, v. Red Hat, Inc., Defendant.</p>	<p>Case No. 21-949 (LPS) Patent Case Jury Trial Demanded</p>
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FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Orbit Licensing LLC (“Plaintiff”), through its attorneys, complains of Red Hat, Inc. (“Defendant”), and alleges the following:

PARTIES

1. Plaintiff Orbit Licensing LLC is a company established in Texas with its principal place of business at 15922 Eldorado Pkwy, Suite 500-1679, Frisco, TX 75035.
2. Defendant Red Hat, Inc. is a corporation organized and existing under the laws of Delaware that maintains an established place of business at 100 East Davie Street, Raleigh, NC 27601. Defendant can be served through its registered agent, The Corporation Trust Company, at 1209 Orange St., Wilmington, DE 19801.

JURISDICTION

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.
4. This Court has exclusive subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant because it has engaged in systematic and continuous business activities in this District and is incorporated in this District's state. As described below, Defendant has committed acts of patent infringement giving rise to this action within this District.

VENUE

6. Venue is proper in this District under 28 U.S.C. § 1400(b) because Defendant has committed acts of patent infringement in this District and is incorporated in this District's state.

PATENTS-IN-SUIT

7. Plaintiff is the assignee of all right, title and interest in United States Patent Nos. 8,839,195 (the "'195 Patent") and 9,578,040 (the "'040 Patent") (collectively "the Patents-in-Suit"); including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the Patents-in-Suit. Accordingly, Plaintiff possesses the exclusive right and standing to prosecute the present action for infringement of the Patents-in-Suit by Defendant.

THE '195 PATENT

8. The '195 Patent is entitled "Method, system and terminal for locating," and issued on September 16, 2014. A true and correct copy of the '195 Patent is attached hereto as Exhibit 1 and incorporated herein by reference.

9. The '195 Patent is valid and enforceable.

10. Plaintiff is the owner of the '195 Patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '195 patent against infringers, and to collect damages for all relevant times.

11. The '195 Patent claims an inventive and computer centric concept that relates to communication technologies, and in particular a method, a system, and a WEB client for editing scripting language based on WEB. Ex. 1 at 1:13-15.

12. More specifically, the embodiments of the present invention provide a method, a system and a device for editing scripting language based on WEB to solve the problems in the currently related art that the scripting language can only perform relatively simple logical operations such as size comparison, etc., but can not support functions and flow control. *Id.* at 1:35-40. The '195 Patent thus solves a computer centric problem that existed in the prior art.

13. This solution to this problem in the prior art is depicted in figure 1 of the '195 Patent.

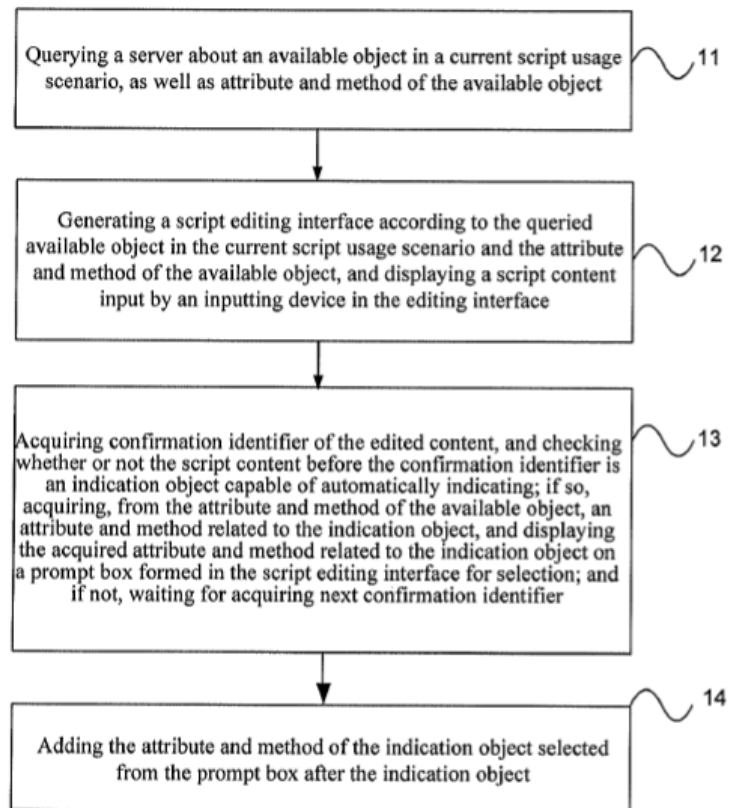


FIG.1

14. In the implementation of the present invention, a online script IDE function is provided, which strongly supports the development and expansibility of the system, and may flexibly control complicated Scenarios, dynamically indicating the attribute and method of the available object according to the using scenario of the script, automatically adding the selected attribute and method to an Script object in editing, making the Scripting language Support functions and flow control, and improving the convenience of the user in editing. *Id.* at 2:52-61.

15. The '195 Patent is thus inventive, not-abstract, and patent eligible under 35 U.S.C. §101.

THE '040 PATENT

16. The '040 Patent is entitled "Packet Receiving Method, Deep Packet Inspection Device and System," and issued on February 21, 2017. A true and correct copy of the '040 Patent is attached hereto as Exhibit 2 and incorporated herein by reference.

17. The '040 Patent is valid and enforceable.

18. Plaintiff is the owner of the '040 Patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the '040 patent against infringers, and to collect damages for all relevant times.

19. The '040 Patent claims an inventive and computer centric concept that relates to the field of communications and, more particularly, to a packet receiving method, a deep packet inspection device and system.

20. Embodiments of the present invention provide a packet receiving method, a deep packet inspection device and system, which can improve the capability for identifying the packet of the deep packet inspection device, and prevent occurrence of bugs caused by insufficient identification. Ex. B at 1:52-56.

21. One embodiment of the '040 is shown below.

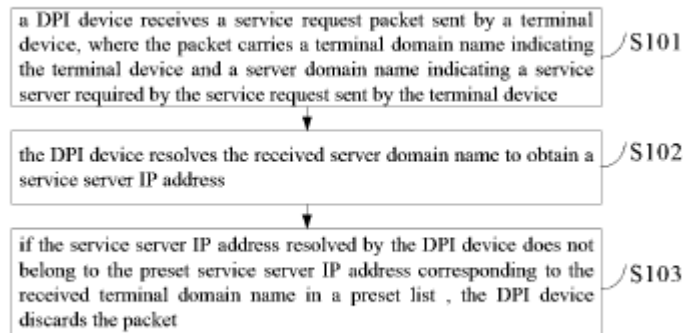


FIG. 1

22. The '040 Patent solved the computer centric problem of users being able to access websites that require a monetary subscription by altering the host field. The '040 Patent solves this problem by using a deep packet inspector device to inspect packet information prior to allowing access to a service server. If the deep packet inspector detects information in a user's packet request that does not match an authorized user's account, it will discard the packet and the user will not gain access.

23. The '040 Patent is thus inventive, not-abstract, and patent eligible under 35 U.S.C. §101.

COUNT 1: INFRINGEMENT OF THE '195 PATENT

24. Plaintiff incorporates the above paragraphs herein by reference.

25. **Direct Infringement.** Defendant has directly infringed, literally or by the doctrine of equivalents, at least claim 1 of the '195 Patent (the "Exemplary '195 Patent Claim") in at least this District by having made, used, offered to sell, sold and/or imported,

without limitation, the Eclipse CHE (the “Exemplary Defendant Product”) advertised on its website <https://codenvy.com>. On information and belief, other services that infringe the claims of the ‘195 Patent have been made, used, sold, imported, and offered for sale by Defendant and/or its customers.

26. Defendant also has directly infringed, literally or under the doctrine of equivalents, the Exemplary ‘195 Patent Claim, by having its employees internally test and use these Exemplary Products.

27. Exhibit 3 includes charts comparing the Exemplary ‘195 Patent Claim to the Exemplary Defendant Product. As set forth in these charts, the Exemplary Defendant Product practice the technology claimed by the ‘195 Patent. Defendant’s open source cloud IDE operates in an infringing manner as demonstrated by Exhibit 3. Accordingly, the Exemplary Defendant Product incorporated in these charts satisfy all elements of the Exemplary ‘195 Patent Claim.

28. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit 3.

29. Plaintiff is entitled to recover damages adequate to compensate for Defendants infringement.

30. **Induced Infringement.** Upon information and belief, Defendant actively, knowingly, and intentionally has been and continues to induce infringement of the ‘195 Patent, literally or by the doctrine of equivalents, by selling Exemplary Defendant Product to their customers for use in end-user products in a manner that infringes one or more claims of the ‘195 Patent.

31. **Contributory Infringement.** Defendant actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '195 Patent, literally or by the doctrine of equivalents, by selling Exemplary Defendant Product to their customers for use in end-user products in a manner that infringes one or more claims of the '195 Patent. Moreover, the Exemplary Defendant Product is not a staple article of commerce suitable for substantial noninfringing use. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1321 (Fed. Cir. 2009) (holding that the "substantial non-infringing use" element of a contributory infringement claim applies to an infringing feature or component, and that an "infringing feature" of a product does not escape liability simply because the product as a whole has other non-infringing uses).

32. Defendants had knowledge that third parties, such as their customers, would infringe for a variety of reasons, such as the following:

- a. By including in the Exemplary Product a component that can only infringe, the inference that infringement is intended is unavoidable and sufficient to satisfy the knowledge element of contributory infringement. *See Motiva Patents, LLC v. Sony Corp.*, 408 F. Supp. 3d 819 (E.D. Tex. 2019); *see also Ricoh Co. v. Quanta Computer Inc.*, 550 F.3d 1325, 1338 (Fed. Cir. 2008).
- b. On information and belief, in conducting prior art searches and freedom to operate analyses, Defendant became apprised of the '195 Patent.
- c. To the extent defendants argue they were not aware of the '195 Patent, defendants were willfully blind, which is alone sufficient to impute knowledge for contributory infringement, even in the absence of actual knowledge. *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, 824 F.3d 1344, 1347 (Fed. Cir. 2016).

33. Exhibit 3 includes charts comparing the Exemplary '195 Patent Claims to the Exemplary Defendant Product. As set forth in these charts, the Exemplary Defendant Products practice the technology claimed by the '195 Patent. Accordingly, the Exemplary Defendant Product incorporated in these charts satisfy all elements of the Exemplary '195 Patent Claims.

34. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit 3.

35. Plaintiff is entitled to recover damages adequate to compensate for Defendant's infringement.

COUNT 2: INFRINGEMENT OF THE '040 PATENT

36. Plaintiff incorporates the above paragraphs herein by reference.

37. **Direct Infringement.** Defendant has directly infringed at least claim 1 of the '040 Patent in at least this District by having made, used, offered to sell, sold and/or imported, without limitation, at least the <https://codenvy.com> website (the "Exemplary Defendant Product") that infringe at least claim 1 of the '040 Patent also identified in the charts incorporated into this Count below (the "Exemplary '040 Patent Claim") literally or by the doctrine of equivalents. On information and belief, numerous other services that infringe the claims of the '040 Patent have been made, used, sold, imported, and offered for sale by Defendant and/or its customers.

38. Defendant also has and continues to directly infringe, literally or under the doctrine of equivalents, the Exemplary '040 Patent Claim, by having its employees internally test and use these Exemplary Products.

39. Exhibit 4 includes charts comparing the Exemplary '040 Patent Claim to the Exemplary Defendant Product. As set forth in these charts, the Exemplary Defendant Product practice the technology claimed by the '040 Patent. Defendant's website utilizes Sender Policy Framework (SPF) protocol. SPF protocol is a packet receiving method that infringes the '040 Patent as shown in Exhibit 4. Accordingly, the Exemplary Defendant Product incorporated in these charts satisfy all elements of the Exemplary '040 Patent Claim.

40. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit 4.

41. Plaintiff is entitled to recover damages adequate to compensate for Defendants infringement.

42. **Induced Infringement.** Upon information and belief, Defendant actively, knowingly, and intentionally has been and continues to induce infringement of the '040 Patent, literally or by the doctrine of equivalents, by selling Exemplary Defendant Product to their customers for use in end-user products in a manner that infringes one or more claims of the '040 Patent.

43. **Contributory Infringement.** Defendant actively, knowingly, and intentionally has been and continues materially contribute to their own customers' infringement of the '040 Patent, literally or by the doctrine of equivalents, by selling the Exemplary Defendant Product to their customers for use in end-user products in a manner that infringes one or more claims of the '040 Patent. Moreover, the Exemplary Defendant Product is not a staple article of commerce suitable for substantial noninfringing use. *See, e.g., Lucent Techs., Inc. v. Gateway, Inc.*, 580 F.3d 1301, 1321 (Fed. Cir. 2009) (holding that the "substantial non-infringing use" element of a contributory infringement claim applies to an infringing feature or component,

and that an “infringing feature” of a product does not escape liability simply because the product as a whole has other non-infringing uses).

44. Defendants had knowledge that third parties, such as their customers, would infringe for a variety of reasons, such as the following:

- a. By including in the Exemplary Product a component that can only infringe, the inference that infringement is intended is unavoidable and sufficient to satisfy the knowledge element of contributory infringement. *See Motiva Patents, LLC v. Sony Corp.*, 408 F. Supp. 3d 819 (E.D. Tex. 2019); *see also Ricoh Co. v. Quanta Computer Inc.*, 550 F.3d 1325, 1338 (Fed. Cir. 2008).
- b. On information and belief, in conducting prior art searches and freedom to operate analyses, Defendant became apprised of the ‘040 Patent.
- c. To the extent defendants argue they were not aware of the ‘040 Patent, defendants were willfully blind, which is alone sufficient to impute knowledge for contributory infringement, even in the absence of actual knowledge. *Warsaw Orthopedic, Inc. v. NuVasive, Inc.*, 824 F.3d 1344, 1347 (Fed. Cir. 2016).

45. Exhibit 3 includes charts comparing the Exemplary ‘040 Patent Claim to the Exemplary Defendant Product. As set forth in these charts, the Exemplary Defendant Product practices the technology claimed by the ‘040 Patent. Accordingly, the Exemplary Defendant Product incorporated in these charts satisfy all elements of the Exemplary ‘040 Patent Claims.

46. Plaintiff therefore incorporates by reference in its allegations herein the claim charts of Exhibit 4.

47. Plaintiff is entitled to recover damages adequate to compensate for Defendant's infringement.

JURY DEMAND

48. Under Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

- A. A judgment that the '195 Patent is valid and enforceable
- B. A judgment that the '040 Patent is valid and enforceable
- C. A judgment that Defendant has infringed directly and indirectly one or more claims of the '195 Patent;
- D. A judgment that Defendant has infringed directly and indirectly one or more claims of the '040 Patent;
- E. An accounting of all damages not presented at trial;
- F. A judgment that awards Plaintiff all appropriate damages under 35 U.S.C. § 284 for Defendants past infringement with respect to the '195 Patent.
- G. A judgment that awards Plaintiff all appropriate damages under 35 U.S.C. § 284 for Defendants past infringement with respect to the '040 Patent.
- H. And, if necessary, to adequately compensate Plaintiff for Defendants infringement, an accounting:
 - i. that this case be declared exceptional within the meaning of 35 U.S.C. § 285 and that Plaintiff be awarded its reasonable attorneys fees against Defendant that it incurs in prosecuting this action;

- ii. that Plaintiff be awarded costs, and expenses that it incurs in prosecuting this action; and
- iii. that Plaintiff be awarded such further relief at law or in equity as the Court deems just and proper.

Dated: October 22, 2021

Respectfully submitted,

/s/ David deBruin

David deBruin

GAWTHROP GREENWOOD, PC

3711 Kennett Pike, Suite 100

Wilmington, DE 19807

302-777-5353

ddebruin@gawthrop.com

Counsel for Orbit Licensing LLC