IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

	§	
SERVSTOR TECHNOLOGIES LLC,	§	Case No.
	§	
Plaintiff,	§	**JURY TRIAL DEMANDED**
	§	
v.	§	
	§	
NEC CORPORATION,	§	
	§	
Defendant.	§	

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff ServStor Technologies LLC ("ServStor" or "Plaintiff"), for its Complaint against

Defendant NEC Corporation ("NEC" or "Defendant") alleges as follows:

THE PARTIES

1.   ServStor is a limited liability company, organized and existing under the laws of

the State of Texas, with its principal place of business located at 104 E. Houston Street, Suite 190,

Marshall, Texas 75670.

2.   Upon information and belief, Defendant NEC is a corporation organized and

existing under the laws of Japan, with its principal place of business located at 7-1, Shiba 5 Chome,

Minato-ku, Tokyo 108-8001, Japan, and may be served pursuant to the provisions of the Hague

Convention. NEC is a leading manufacturer and seller of computers and server equipment in the

world and in the United States. Upon information and belief, NEC does business in Texas and in

this Judicial District, directly or through intermediaries.

JURISDICTION

3.   This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq*. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4.   This Court has personal jurisdiction over Defendant. Defendant regularly conducts business and has committed acts of patent infringement and/or has induced acts of patent infringement by others in this Judicial District and/or has contributed to patent infringement by others in this Judicial District, the State of Texas, and elsewhere in the United States.

5.   Venue is proper in this Judicial District pursuant to 28 U.S.C. § 1391 because, among other things, Defendant is not a resident in the United States, and thus may be sued in any judicial district pursuant to 28 U.S.C. § 1391(c)(3).

6.   Defendant is subject to this Court's jurisdiction pursuant to due process and/or the Texas Long Arm Statute due at least to its substantial business in this State and Judicial District, including (a) at least part of its past infringing activities, (b) regularly doing or soliciting business in Texas, and/or (c) engaging in persistent conduct and/or deriving substantial revenue from goods and services provided to customers in Texas.

PATENTS-IN-SUIT

7.   On February 14, 2006, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,000,010 (the "'010 Patent") entitled "System and Method for Caching Web Pages on a Management Appliance for Personal Computers." A true and correct copy of the '010 Patent is available at: https://pdfpiw.uspto.gov/.piw?docid=07000010.

8.   On January 11, 2011, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,870,271 (the "'271 Patent") entitled "Disk Drive Partitioning

Methods and Apparatus."   A true and correct copy of the '271 Patent is available at: https://pdfpiw.uspto.gov/.piw?docid=07870271.

9.   On March 13, 2007, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,191,274 (the "'274 Patent") entitled "Method and System for Providing Independent Server Functionality in a Single Personal Computer." A true and correct copy of the '274 Patent is available at: https://pdfpiw.uspto.gov/.piw?docid=07191274.

10.   On May 18, 2004, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,738,930 (the "'930 Patent") entitled "Method and System for Extending the Functionality of an Environmental Monitor for an Industrial Personal Computer.". A true and correct copy of the '930 Patent is available at: https://pdfpiw.uspto.gov/.piw?docid=06738930.

11.   On December 18, 2007, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 7,310,750 (the "'750 Patent") entitled "Method and System for Extending the Functionality of an Environmental Monitor for an Industrial Personal Computer." A   true   and   correct   copy   of   the   '750   Patent   is   available   at: https://pdfpiw.uspto.gov/.piw?docid=07310750.

12.   ServStor is the sole and exclusive owner of all right, title, and interest in the '010 Patent, the '274 Patent, the '930 Patent, the '750 Patent, and the '271 Patent (collectively, the "Patents-in-Suit") and holds the exclusive right to take all actions necessary to enforce its rights to the Patents-in-Suit, including the filing of this patent infringement lawsuit. ServStor also has the right to recover all damages for past, present, and future infringement of the Patents-in-Suit and to seek injunctive relief as appropriate under the law.

FACTUAL ALLEGATIONS

13.   The Patents-in-Suit generally pertain to systems and methods for use in computer and server storage and structure.

14.   The '010 Patent, the '930 Patent, and the '750 Patent generally relate to technology for a system for monitoring and managing server computers. The technology described by the '010 Patent, the '930 Patent, and the '750 Patent was developed by inventors Christopher M. Jensen, David T. Medin, and Matthew J. Poduska at Crystal Group Inc. For example, the technology described in the '010 Patent, the '930 Patent, and the '750 Patent is implemented by functionality within servers pertaining to monitoring and alarm card functionality.

15.   The '274 Patent generally relates to technology for providing independent server functionality for computer peripherals such as, but not limited to, computer and server disk drives. The technology described by the '274 Patent was developed by inventor Matthew J. Poduska at Crystal Group Inc. For example, the technology is implemented by infringing servers that utilize independent circuit cards.

16.   The '271 Patent generally relates to technology for disk drive partitioning of computer peripherals, such as computer and server disk drives. The technology described by the '271 Patent was developed by inventors Charles Frank, Thomas Ludwig, Thomas Hanan, and William Babbitt.

17.   NEC has infringed and is continuing to infringe the Patents-in-Suit by making, using, selling, offering to sell, and/or importing, and by actively inducing others to make, use, sell, offer to sell, and/or import products, including servers and racks, that utilize the above technology and associated software that infringes the Patents-in-Suit. NEC has also infringed and is continuing to infringe the Patents-in-Suit by making, using, selling, offering to sell, and/or

importing, and by actively inducing others to make, use, sell, offer to sell, and/or import products, including servers, that utilize drive technology and associated software that infringes the Patents-in-Suit. Such NEC products include NEC servers, such as the NEC Express5800 Server Series, including, but not limited to, Blade Enclosure M and Blade Enclosure H servers and accompanying blades, including, but not limited to, the B120g-h, B120f, B120f-h, B120e, B110d, B120d, B120d-h, B120b, B120b-d, B120b-h, B120a, and B120a-d, such as the AD106c, AD106b, and AT101b, among other products. Upon information and belief, these infringing NEC server products further include management modules, working with a Baseboard Management Controller to provide remote management capabilities – *e.g.*, EXPRESSSCOPE Engine 3:

PREFACE

The EXPRESSSCOPE Engine 3 enables you to monitor the operating status of the Server Module (temperature and so forth), to operate the Server Module's keyboard, video, and mouse (KVM) from a remote console and to access to CD-ROM/Floppy disk drives on a remote site*. The EXPRESSSCOPE Engine 3 is enabled by a system management LSI called "BMC (Baseboard Management Controller)" and thus referred to as the "BMC" hereinafter in this User's Guide. [1]

COUNT I
(Infringement of the '010 Patent)

18.   Paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.

19.   ServStor has not licensed or otherwise authorized Defendant to make, use, offer for sale, sell, or import any products that embody the inventions of the '010 Patent.

20.   Defendant has and continues to directly infringe the '010 Patent, either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271, by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '010 Patent. Such products include computer

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[1] https://www.necam.com/Docs/?id=3fa1a888-aa74-4acb-bae0-f80f02622855.

devices, such as servers, that assess various computer status information. Upon information and

belief, such NEC products include at least NEC servers, such as the NEC Express5800 Server

Series, including, but not limited to, Blade Enclosure M and Blade Enclosure H servers and

accompanying blades, including, but not limited to, the B120g-h, B120f, B120f-h, B120e, B110d,

B120d, B120d-h, B120b, B120b-d, B120b-h, B120a, and B120a-d, such as the AD106c, AD106b,

and AT101b, among other products.

21.   For example, Defendant has and continues to directly infringe at least claim 1 of

the '010 Patent by making, using, offering to sell, selling, and/or importing into the United States

products that include computers and servers with the capability to report various computer status

information including, but not limited to, temperature, motor, and power status, among other

features.

22.   For example, the B120g-h comprises an apparatus for managing characteristics of

a computer having a host CPU. The B120g-h comprises a management appliance, disposed in said

computer and, at least indirectly, coupled to said host CPU. The management appliance has a

management appliance microprocessor therein which runs a management appliance microserver,

capable of handling web and IP-based content. The management appliance comprises an out-of-

band connection to a network. The management appliance also comprises an internal connection

to the host CPU. The host CPU, in combination with a web server in said computer, is configured

to generate host computer monitoring web pages. The management application microserver, via

a host CPU to management appliance connection, monitors the host computer monitoring web

pages. The management appliance reports, via the out-of-band connection, to an external network,

status information contained in said host computer monitoring web pages.

23.   Defendant has and continues to indirectly infringe one or more claims of the '010

Patent by knowingly and intentionally inducing others, including NEC customers and end-users, to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States products that include infringing technology, such as servers that report computer status information.

26. Defendant, with knowledge that these products, or the use thereof, infringe the '010 Patent at least as of the date of this Complaint, knowingly and intentionally induced, and continues to knowingly and intentionally induce, direct infringement of the '010 Patent by providing these products to end-users for use in an infringing manner.

25. Defendant has induced infringement by others, including end- users, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end-users, infringe the '010 Patent, but while remaining willfully blind to the infringement.

26. ServStor has suffered damages as a result of Defendant's direct and indirect infringement of the '010 Patent in an amount to be proved at trial.

27. ServStor has suffered, and will continue to suffer, irreparable harm as a result of Defendant's infringement of the '010 Patent for which there is no adequate remedy at law, unless Defendant's infringement is enjoined by this Court.

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COUNT II
(Infringement of the '930 Patent)

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28. Paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.

29. ServStor has not licensed or otherwise authorized Defendant to make, use, offer for sale, sell, or import any products that embody the inventions of the '930 Patent.

30. Defendant has and continues to directly infringe the '930 Patent, either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271, by making,

using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '930 Patent. Such products include computer devices, such as servers, that assess various computer status information. Upon information and belief, such NEC products include at least NEC servers, such as the NEC Express5800 Server Series, including, but not limited to, Blade Enclosure M and Blade Enclosure H servers and accompanying blades, including, but not limited to, the B120g-h, B120f, B120f-h, B120e, B110d, B120d, B120d-h, B120b, B120b-d, B120b-h, B120a, and B120a-d, such as the AD106c, AD106b, and AT101b, among other products.

31.   For example, Defendant has and continues to directly infringe at least claim 1 of the '930 Patent by making, using, offering to sell, selling, and/or importing into the United States products that include computers and servers with the capability to report various computer status, including, but not limited to, temperature, motor, and power status, among other features.

32.   For example, the B120g-h comprises an apparatus for monitoring environmental characteristics of an individual personal computer, of the type having a host CPU device or the equivalent thereof. The B120g-h also includes an alarm card, disposed in said industrial personal computer and coupled with a host CPU device. The alarm card comprises an alarm card microprocessor therein which runs a management appliance microserver capable of handling web and IP-based content. The alarm card further comprises an out-of-band connection to a network. The alarm card also comprises an internal connection to the host CPU. The host CPU may contain IP-based content. The host CPU is configured to generate monitoring web pages. Via the internal connection, the alarm card microserver monitors the host CPU web-based content and the host CPU. Via the out-of-band connections, the alarm card reports, to an external network, status information contained in the web-enabled content on the host CPU.

33.   Defendant has and continues to indirectly infringe one or more claims of the '930 Patent by knowingly and intentionally inducing others, including NEC customers and end-users, to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States products that include infringing technology, such as computers and servers that assess a various computer status.

34.   Defendant, with knowledge that these products, or the use thereof, infringe the '930 Patent at least as of the date of this Complaint, knowingly and intentionally induced, and continues to knowingly and intentionally induce, direct infringement of the '930 Patent by providing these products to end-users for use in an infringing manner.

35.   Defendant has induced infringement by others, including end-users, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end-users, infringe the '930 Patent, but while remaining willfully blind to the infringement.

36.   ServStor has suffered damages as a result of Defendant's direct and indirect infringement of the '930 Patent in an amount to be proved at trial.

37.   ServStor has suffered, and will continue to suffer, irreparable harm as a result of Defendant's infringement of the '930 Patent for which there is no adequate remedy at law, unless Defendant's infringement is enjoined by this Court.

COUNT III
(Infringement of the '750 Patent)

38.   Paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.

39.   ServStor has not licensed or otherwise authorized Defendant to make, use, offer for sale, sell, or import any products that embody the inventions of the '750 Patent.

40.   Defendant has and continues to directly infringe the '750 Patent, either literally or

under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271, by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '750 Patent. Such products include computer devices, such as servers, that assess various computer status information. Upon information and belief, such NEC products include at least NEC servers, such as the NEC Express5800 Server Series, including, but not limited to, Blade Enclosure M and Blade Enclosure H servers and accompanying blades, including, but not limited to, the B120g-h, B120f, B120f-h, B120e, B110d, B120d, B120d-h, B120b, B120b-d, B120b-h, B120a, and B120a-d, such as the AD106c, AD106b, and AT101b, among other products.

41.   For example, Defendant has and continues to directly infringe at least claim 1 of the '930 Patent by making, using, offering to sell, selling, and/or importing into the United States products, such as computers and servers that assess various computer status information.

42.   For example, the B120g-h comprises an apparatus for monitoring environment characteristic of an industrial personal computer, of the type having a host CPU device or the equivalent thereof. The B120g-h includes an alarm card, disposed in said industrial personal computer and coupled with a host CPU. The alarm card comprises an alarm card microprocessor therein which runs an alarm card server, capable of handling web-based content. The alarm card comprises an out-of-band connection to a network. The alarm card also comprises and internal connection to the host CPU. Via the internal connection, the alarm card server monitors the host CPU web-based content on the host CPU. Via the out-of-band connection, the alarm card reports, to an externa network, information contained in web-based content on the host CPU.

43.   Defendant has and continues to indirectly infringe one or more claims of the '750 Patent by knowingly and intentionally inducing others, including NEC customers and end-users,

to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering

to sell, selling, and/or importing into the United States products that include infringing technology,

such as computers and servers that assess various computer status information.

44.   Defendant, with knowledge that these products, or the use thereof, infringe the '750

Patent at least as of the date of this Complaint, knowingly and intentionally induced, and continues

to knowingly and intentionally induce, direct infringement of the '750 Patent by providing these

products to end users for use in an infringing manner.

45.   Defendant has induced infringement by others, including end-users, with the intent

to cause infringing acts by others or, in the alternative, with the belief that there was a high

probability that others, including end-users, infringe the '750 Patent, but while remaining willfully

blind to the infringement.

46.   ServStor has suffered damages as a result of Defendant's direct and indirect

infringement of the '750 Patent in an amount to be proved at trial.

47.   ServStor has suffered, and will continue to suffer, irreparable harm as a result of

Defendant's infringement of the '750 Patent for which there is no adequate remedy at law, unless

Defendant's infringement is enjoined by this Court.

COUNT IV
(Infringement of the '274 Patent)

48.   Paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.

49.   ServStor has not licensed or otherwise authorized Defendant to make, use, offer for

sale, sell, or import any products that embody the inventions of the '274 Patent.

50.   Defendant has and continues to directly infringe the '274 Patent, either literally or

under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271, by making,

using, offering to sell, selling, and/or importing into the United States products that satisfy each

and every limitation of one or more claims of the '274 Patent. Such products include server

configurations where each server communicates independently of one another. Upon information

and belief, such NEC products include at least NEC servers, such as the NEC Express5800 Server

Series, including, but not limited to, Blade Enclosure M and Blade Enclosure H servers and

accompanying blades, including, but not limited to, the B120g-h, B120f, B120f-h, B120e, B110d,

B120d, B120d-h, B120b, B120b-d, B120b-h, B120a, and B120a-d, such as the AD106c, AD106b,

and AT101b, among other products.

51.   For example, Defendant has and continues to directly infringe at least claim 1 of

the '274 Patent by making, using, offering to sell, selling, and/or importing into the United States

infringing technology.

52.   For example, the Blade Enclosure M is a computer system. The Blade Enclosure

M comprises a chassis, having a plurality of slots thereon each configured for receiving one of a

plurality of planar shaped circuit cards therein. The Blade Enclosure M further comprises a shroud

coupled to said chassis to form an enclosure about said plurality of planar shaped circuit cards.

The plurality of planar shaped circuit cards is each configured for providing an independent

dedicated server function. Each said plurality of planar circuit cards being configured so as to be

free from any direct communication connection with any inter-card bus inside said enclosure.

53.   Defendant has and continues to indirectly infringe one or more claims of the '274

Patent by knowingly and intentionally inducing others, including NEC customers and end-users,

to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering

to sell, selling, and/or importing into the United States products that include infringing technology.

54.   Defendant, with knowledge that these products, or the use thereof, infringe the '274

Patent at least as of the date of this Complaint, knowingly and intentionally induced, and continues

to knowingly and intentionally induce, direct infringement of the '274 Patent by providing these products to end-users for use in an infringing manner.

55.   Defendant has induced infringement by others, including end-users, with the intent to cause infringing acts by others or, in the alternative, with the belief that there was a high probability that others, including end-users, infringe the '274 Patent, but while remaining willfully blind to the infringement.

56.   ServStor has suffered damages as a result of Defendant's direct and indirect infringement of the '274 Patent in an amount to be proved at trial.

57.   ServStor has suffered, and will continue to suffer, irreparable harm as a result of Defendant's infringement of the '274 Patent for which there is no adequate remedy at law, unless Defendant's infringement is enjoined by this Court.

COUNT V
(Infringement of the '271 Patent)

58.   Paragraphs 1 through 17 are incorporated by reference as if fully set forth herein.

59.   ServStor has not licensed or otherwise authorized Defendant to make, use, offer for sale, sell, or import any products that embody the inventions of the '271 Patent.

60.   Defendant has and continues to directly infringe the '271 Patent, either literally or under the doctrine of equivalents, without authority and in violation of 35 U.S.C. § 271, by making, using, offering to sell, selling, and/or importing into the United States products that satisfy each and every limitation of one or more claims of the '271 Patent. Such products include server partitions that are separately addressed by distinct IP addresses. Upon information and belief, such NEC products include at least NEC servers, such as the NEC Express5800 Server Series, including, but not limited to, Blade Enclosure M and Blade Enclosure H servers and accompanying blades, including, but not limited to, the B120g-h, B120f, B120f-h, B120e, B110d, B120d, B120d-

h, B120b, B120b-d, B120b-h, B120a, and B120a-d, such as the AD106c, AD106b, and AT101b, among other products.

61.   For example, Defendant has and continues to directly infringe at least claim 1 of the '271 Patent by making, using, offering to sell, selling, and/or importing into the United States infringing technology.

62.   For example, upon information and belief, the B120g-h is a computer system. The B120g-h comprises a storage medium. The B120g-h further comprises a network interface configured to couple the B120g-h to a network. The B120g-h further comprises a storage element communicatively coupled to the storage medium and the network interface. Upon information and belief, the B120g-h's storage element is configured to receive, via the network interface, a request for a partition allocation, the request including a name. Upon information and belief, the B120g-h's storage element is further configured to create and allocate a partition of the storage medium based at least in part on the request. Upon information and belief, the B120g-h's storage element is further configured to obtain, from a dynamic host configuration protocol (DHCP) server, an internet protocol (IP) address for the partition of the storage medium. Upon information and belief, the B120g-h's storage element is further configured to associate the name with the IP address.

63.   Defendant has and continues to indirectly infringe one or more claims of the '271 Patent by knowingly and intentionally inducing others, including NEC customers and end-users, to directly infringe, either literally or under the doctrine of equivalents, by making, using, offering to sell, selling, and/or importing into the United States products that include infringing technology, such as server partitions that are separately addressed by distinct IP addresses.

64.   Defendant, with knowledge that these products, or the use thereof, infringe the '271

Patent at least as of the date of this Complaint, knowingly and intentionally induced, and continues

to knowingly and intentionally induce, direct infringement of the '271 Patent by providing these

products to end-users for use in an infringing manner.

66. Defendant has induced infringement by others, including end-users, with the intent

to cause infringing acts by others or, in the alternative, with the belief that there was a high

probability that others, including end-users, infringe the '271 Patent, but while remaining willfully

blind to the infringement.

66. ServStor has suffered damages as a result of Defendant's direct and indirect

infringement of the '271 Patent in an amount to be proved at trial.

67. ServStor has suffered, and will continue to suffer, irreparable harm as a result of

Defendant's infringement of the '271 Patent for which there is no adequate remedy at law, unless

Defendant's infringement is enjoined by this Court.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, ServStor prays for relief against Defendant as follows:

a. Entry of judgment declaring that Defendant has directly and/or indirectly infringed

one or more claims of each of the Patents-in-Suit;

b. An order pursuant to 35 U.S.C. § 283 permanently enjoining Defendant, its

officers, agents, servants, employees, attorneys, and those persons in active concert or

participation with it, from further acts of infringement of the Patents-in-Suit;

c. An order awarding damages sufficient to compensate ServStor for Defendant's

infringement of the Patents-in-Suit, but in no event less than a reasonable royalty, together with

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interest and costs;

        d.   Entry of judgment declaring that this case is exceptional and awarding ServStor its

costs and reasonable attorney fees under 35 U.S.C. § 285; and

        e.   Such other and further relief as the Court deems just and proper.

Dated: July 7, 2022   Respectfully submitted,

                                    /s/ *Vincent J. Rubino, III*
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