

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

CROGA INNOVATIONS LTD.,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Case No. 2:23-cv-634

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement arising under the Patent Laws of the United States of America, 35 U.S.C. § 1 *et seq.*, in which Plaintiff Croga Innovations Ltd. (“Plaintiff” or “Croga”) makes the following allegations against Defendant International Business Machines Corporation (“Defendant” or “IBM”).

INTRODUCTION

1. This complaint arises from Defendant’s unlawful infringement of the following United States patents owned by Plaintiff, which relate to improvements in computer network security: United States Patent Nos. 11,178,104 (“the ’104 Patent”) and 10,601,780 (“the ’780 Patent”) (collectively, the “Asserted Patents”).

PARTIES

2. Plaintiff Croga Innovations Limited is a private company limited by shares organized and existing under the laws of Ireland, with its principal place of business at The Hyde Building, Suite 23, The Park, Carrickmines, Dublin 18, Ireland. Croga is the sole owner by

assignment of all right, title, and interest in the Asserted Patents, including the right to recover for past, present, and future infringement.

3. Defendant International Business Machine Corporation (“IBM”) is a New York corporation with its principal place of business in Armonk, New York 10504. IBM’s Registered Agent for service of process in Texas is CT Corp. System, 1999 Bryan St., Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over IBM in this action because IBM has committed acts within this District giving rise to this action and has established minimum contacts with this forum such that the exercise of jurisdiction over IBM would not offend traditional notions of fair play and substantial justice. IBM, directly and through subsidiaries or intermediaries, has committed and continues to commit acts of infringement in this District by, among other things, importing, offering to sell, and selling products that infringe the Asserted Patents. In addition, IBM is registered to do business in Texas and maintains regular and established places of business in Texas and this District, including at 1700 Summit Avenue, Plano, Texas 75074; 931 Litsey Road, Roanoke, Texas 76262; and 615 E. State Highway 121, Suite 33, Coppell, Texas, 75019.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b). IBM is registered to do business in Texas, and upon information and belief, IBM has transacted business in this District and has committed acts of direct and indirect infringement in this District by, among other things, making, using, offering to sell, selling, and importing products that infringe the

Asserted Patent. IBM has regular and established places of business in this District, including at 1700 Summit Avenue, Plano, Texas 75074.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 11,178,104

7. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

8. Plaintiff owns by assignment all rights, title, and interest, including the right to recover damages for past, present, and future infringement, in U.S. Patent No. 11,178,104, titled “Network isolation with cloud networks.” The ’104 Patent was duly and legally issued by the United States Patent and Trademark Office on November 16, 2021. A true and correct copy of the ’104 Patent is attached as Exhibit 1.

9. On information and belief, Defendant has and continues to make, use, offer for sale, sell, and/or import certain products and services, including without limitation IBM Wazi Developer versions 1.4, 2.4, 2.5 and 2.6 with IBM Z and IBM LinuxOne platforms IBM Cloud, IBM Cloud Virtual Servers, and IBM Cloud Bare Metal Servers (“Accused Products”), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’104 Patent. Identification of the Accused Products will be provided in Plaintiff’s infringement contentions disclosed pursuant to the Court’s scheduling order.

10. The Accused Products satisfy all claim limitations of one or more claims of the ’104 Patent. A claim chart comparing exemplary independent claim 1 of the ’104 Patent to representative Accused Products is attached as Exhibit 2.

11. By making, using, offering for sale, selling and/or importing into the United States the Accused Products, IBM has injured Plaintiff and is liable for infringement of the '104 Patent pursuant to 35 U.S.C. § 271.

12. IBM also knowingly and intentionally induces infringement of one or more claims of the '104 Patent in violation of 35 U.S.C. § 271(b). At least as of the filing and service of this complaint, IBM has knowledge of the '104 Patent and the infringing nature of the Accused Products through, for example, the '104 Patent claim chart served therewith. Despite this knowledge of the '104 Patent, IBM continues to actively encourage and instruct its customers and end users (for example, through user manuals and online instruction materials on its website and materials cited in Exhibit 2) to use the Accused Products in ways that directly infringe the '104 Patent. For example, IBM advertises the features of the Wazi Sandbox, including that it provides “a containerized, personal z/OS sandbox environment.” Ex. 3 (<https://community.ibm.com/community/user/ibmz-and-linuxone/blogs/raichel-jayakar1/2021/02/17/available-now-ibm-wazi-developer-byoide>). Further, IBM provides its users with instructions explaining how to utilize zOS, such as to communicate with a proxy server. Ex. 4 (<https://www.ibm.com/docs/en/zos/2.3.0?topic=enabler-syntax-linkage-programming-considerations#d185854e847>). IBM provides these instructions, user manuals, and other materials knowing and intending (or with willful blindness to the fact) that its customers and end users will commit these infringing acts. IBM also continues to make, use, offer for sale, sell, and/or import the Accused Products, despite its knowledge of the '104 Patent, thereby specifically intending for and inducing its customers to infringe the '104 Patent through the customers' normal and customary use of the Accused Products.

13. IBM has also infringed, and continues to infringe, one or more claims of the '104 Patent by selling, offering for sale, or importing into the United States, the Accused Products, knowing that the Accused Products constitute a material part of the inventions claimed in the '104 Patent, are especially made or adapted to infringe the '104 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use. At least as of the filing and service of this complaint, IBM has knowledge of the '104 Patent and the infringing nature of the Accused Products through, for example, the '104 Patent claim chart served therewith. IBM has been, and currently is, contributorily infringing the '104 Patent in violation of 35 U.S.C. §§ 271(c) and/or (f). For example, IBM's Wazi Developer versions 1.4, 2.4, 2.5 and 2.6 with IBM Z and IBM LinuxOne platforms IBM Cloud, IBM Cloud Virtual Servers, and IBM Cloud Bare Metal Servers constitute a material part of the inventions claimed in the '104 Patent, are especially made or adapted to infringe the '104 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use, as demonstrated by the evidence in Exhibit 2.

14. On information and belief, Plaintiff (including its predecessors and any licensees) complied with 35 U.S.C. § 287 because Plaintiff, any predecessor assignees to the '104 Patent, and any licensees did not make, offer for sale, or sell products that practice(d) the '104 Patent during the relevant time period or were not otherwise required to mark during the relevant time period.

15. As a result of IBM's direct infringement of the '104 Patent, Plaintiff is entitled to monetary damages (past, present, and future) in an amount adequate to compensate for IBM's infringement, but in no event less than a reasonable royalty for the use made of the invention by IBM, together with interest and costs as fixed by the Court.

16. As a result of IBM's indirect infringement of the '104 Patent, Plaintiff is entitled to monetary damages (present and future) in an amount adequate to compensate for IBM's infringement, but in no event less than a reasonable royalty for the use made of the invention by IBM, together with interest and costs as fixed by the Court, accruing as of the time IBM obtained knowledge of the '104 Patent.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 10,601,780

17. Plaintiff realleges and incorporates by reference the foregoing paragraphs as if fully set forth herein.

18. Plaintiff owns by assignment all rights, title, and interest, including the right to recover damages for past, present, and future infringement, in U.S. Patent No. 10,601,780, titled "Internet isolation for avoiding internet security threats." The '780 Patent was duly and legally issued by the United States Patent and Trademark Office on March 24, 2020. A true and correct copy of the '780 Patent is attached as Exhibit 5.

19. On information and belief, Defendant has and continues to make, use, offer for sale, sell, and/or import certain products and services, including without limitation IBM Wazi Developer versions 1.4, 2.4, 2.5 and 2.6 with IBM Z and IBM LinuxOne platforms IBM Cloud, IBM Cloud Virtual Servers, and IBM Cloud Bare Metal Servers ("Accused Products"), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '780 Patent. Identification of the Accused Products will be provided in Plaintiff's infringement contentions disclosed pursuant to the Court's scheduling order.

20. The Accused Products satisfy all claim limitations of one or more claims of the '780 Patent. A claim chart comparing exemplary independent claim 1 of the '780 Patent to representative Accused Products is attached as Exhibit 6.

21. By making, using, offering for sale, selling and/or importing into the United States the Accused Products, IBM has injured Plaintiff and are liable for infringement of the '780 Patent pursuant to 35 U.S.C. § 271.

22. IBM also knowingly and intentionally induces infringement of one or more claims of the '780 Patent in violation of 35 U.S.C. § 271(b). At least as of the filing and service of this complaint, IBM has knowledge of the '780 Patent and the infringing nature of the Accused Products through, for example, the '780 Patent claim chart served therewith. Despite this knowledge of the '780 Patent, IBM continues to actively encourage and instruct its customers and end users (for example, through user manuals and online instruction materials on its website and materials cited in Exhibit 6) to use the Accused Products in ways that directly infringe the '780 Patent. For example, IBM advertises the benefits of hybrid cloud with IBM Z to consumers. Ex. 7 (<https://www.ibm.com/z/hybrid-cloud>). Further, IBM provides its users with instructions explaining how to configure a Red Hat OpenShift target environment on the Wazi Sandbox. Ex. 8 (<https://www.ibm.com/docs/en/cloud-paks/z-modernization-stack/2023.4?topic=sandbox-configuring-red-hat-openshift-target-environment>); Ex. 9 (<https://www.ibm.com/docs/en/cloud-paks/z-modernization-stack/2023.4?topic=openshift-creating-sandbox-instance-wazisandboxsystem>). IBM provides these instructions, user manuals, and other materials knowing and intending (or with willful blindness to the fact) that its customers and end users will commit these infringing acts. IBM also continues to make, use, offer for sale, sell, and/or import the Accused Products, despite its knowledge of the '780 Patent, thereby specifically intending for and

inducing its customers to infringe the '780 Patent through the customers' normal and customary use of the Accused Products.

23. IBM has also infringed, and continues to infringe, one or more claims of the '780 Patent by selling, offering for sale, or importing into the United States, the Accused Products, knowing that the Accused Products constitute a material part of the inventions claimed in the '780 Patent, are especially made or adapted to infringe the '780 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use. At least as of the filing and service of this complaint, IBM has knowledge of the '780 Patent and the infringing nature of the Accused Products through, for example, the '780 Patent claim chart served therewith. IBM has been, and currently is, contributorily infringing the '780 Patent in violation of 35 U.S.C. §§ 271(c) and/or (f). For example, IBM's Wazi Developer versions 1.4, 2.4, 2.5 and 2.6 with IBM Z and IBM LinuxOne platforms IBM Cloud, IBM Cloud Virtual Servers, and IBM Cloud Bare Metal Servers constitute a material part of the inventions claimed in the '780 Patent, are especially made or adapted to infringe the '780 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use, as demonstrated by the evidence in Exhibit 6.

24. On information and belief, Plaintiff (including its predecessors and any licensees) complied with 35 U.S.C. § 287 because Plaintiff, any predecessor assignees to the '780 Patent, and any licensees did not make, offer for sale, or sell products that practice(d) the '780 Patent during the relevant time period or were not otherwise required to mark during the relevant time period.

25. As a result of IBM's direct infringement of the '780 Patent, Plaintiff is entitled to monetary damages (past, present, and future) in an amount adequate to compensate for IBM's

infringement, but in no event less than a reasonable royalty for the use made of the invention by IBM, together with interest and costs as fixed by the Court.

26. As a result of IBM's indirect infringement of the '780 Patent, Plaintiff is entitled to monetary damages (present and future) in an amount adequate to compensate for IBM's infringement, but in no event less than a reasonable royalty for the use made of the invention by IBM, together with interest and costs as fixed by the Court, accruing as of the time IBM obtained knowledge of the '780 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

a. A judgment in favor of Plaintiff that Defendant has infringed, either literally and/or under the doctrine of equivalents, the '104 and '780 Patents;

b. A judgment and order requiring Defendant to pay Plaintiff its damages (past, present, and future), costs, expenses, and pre-judgment and post-judgment interest for their infringement of the '104 and '780 Patents;

c. A judgment and order requiring Defendant to pay Plaintiff compulsory ongoing licensing fees, as determined by the Court;

d. A judgment and order requiring Defendant to provide an accounting and to pay supplemental damages to Plaintiff, including without limitation, pre-judgment and post-judgment interest and compensation for infringing products released after the filing of this case that are not colorably different from the Accused Products;

e. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees against Defendant; and

f. Any and all other relief as the Court may deem appropriate and just under the

circumstances.

DEMAND FOR JURY TRIAL

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

Dated: December 29, 2023

Respectfully submitted,

/s/ Brett E. Cooper _____

Brett E. Cooper (NY SBN 4011011)

bcooper@bc-lawgroup.com

Seth Hasenour (TX SBN 24059910)

shasenour@bc-lawgroup.com

Jonathan Yim (TX SBN 24066317)

jyim@bc-lawgroup.com

Drew B. Hollander (NY SBN 5378096)

dhollander@bc-lawgroup.com

BC LAW GROUP, P.C.

200 Madison Avenue, 24th Floor

New York, NY 10016

Phone: (212) 951-0100

*Attorneys for Plaintiff Croga Innovations
Ltd.*