

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

INNOVATIONS IN MEMORY LLC,

Plaintiff,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Case No. 2:24-cv-296

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 Innovations In Memory LLC (“Plaintiff” or “IIM”) makes the following allegations against Defendant International Business Machines Corporation (“Defendant” or “IBM”):

INTRODUCTION

1. This complaint arises from IBM’s unlawful infringement of the following United States patents owned by Plaintiff concerning improvements in memory storage devices and systems: United States Patent Nos. 9,304,714 (“the ’714 Patent”); 8,285,961 (“the ’961 Patent”); 8,782,340 (“the ’340 Patent”); 7,672,226 (“the ’226 Patent”); 8,160,070 (“the ’070 Patent”); and 8,417,871 (“the ’871 Patent”) (collectively, the “Asserted Patents”).

PARTIES

2. Plaintiff Innovations In Memory LLC is a Delaware limited liability corporation, with its principal place of business at 5 Hilldale Lane, Sands Point, NY 11050. IIM 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. IIM owns an extensive patent portfolio that was developed by Violin Memory Inc. (“Violin”) over the course of its 15 years of pioneering work in flash memory storage solutions, as well as the patent assets of GridIron Systems and Xiotech Corporation, which were both acquired by Violin. IIM’s portfolio includes 299 U.S. and worldwide patents and patent applications.

3. Defendant International Business Machines 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.

BACKGROUND

A. Violin Memory

4. Violin was founded in 2005 by Jon Bennett and Donpaul Stephens to focus on creating all flash storage solutions. Violin raised over \$300 Million in private and public capital and invested it in its R&D and product development. Violin went public in 2013 and was valued at over \$800M. At different times Violin acquired other innovators in the flash storage field, such as Xiotech Corporation and GridIron Systems, along with their key personnel and patents. In 2016, Violin declared bankruptcy and its patent assets were eventually sold.

B. IIM and Dr. Fatih Ozluturk

5. In 2021, IIM purchased Violin’s patent portfolio, which covers data storage systems, including hybrid and all-flash storage arrays, SSDs (solid state storage devices), use of RAID (redundant array of independent disks) and other architectures in such systems, controllers for managing such systems, cache management, and other related key inventions. IIM’s portfolio

is significant in scope (299 U.S. and worldwide patents and patent applications) and widely infringed in the marketplace.

6. IIM was founded by Dr. Fatih Ozluturk, a Ph.D. in Electrical Engineering, distinguished engineer, inventor on nearly 450 issued U.S. patents and numerous pending patent applications, making him one of the most prolific patentees living in the United States.

7. Dr. Ozluturk has a history of inventing solutions that have proved to be significant in multiple generations of wireless technologies, including 3G, and 4G LTE, arising primarily out of his work for wireless pioneer InterDigital. Some have remarked that “Fatih’s groundbreaking inventions span multiple generations of wireless technology and directly benefit the entire wireless ecosystem and billions of consumers globally.” Ex. 1

(<https://www.businesswire.com/news/home/20110418006517/en/%20InterDigital-Honors-Dr.-Fatih-Ozluturk-Inventor-Named>). Dr. Ozluturk also obtained dozens of patents for his inventions related to smartphone cameras, which are now licensed to a great portion of the industry.

8. Dr. Ozluturk is also experienced in patent licensing. For example, Dr. Ozluturk successfully licensed his own digital imaging patents to over 12 of the largest mobile handset and camera companies around the world. He has negotiated and closed more than two dozen licensing deals over the last 3 years for practicing entities that he advises.

C. IIM’s Pre-Suit Communications With IBM

9. On August 11, 2022, IIM sent IBM a letter indicating that certain IBM products needed a license to practice certain IIM patents. Ex. 2. IIM explained that its “patent portfolio currently includes nearly 300 US and foreign patents” and that its “preliminary analysis of International Business Machines Corporation’s (‘IBM’) storage products indicates that IBM needs

a license to the [IIM] portfolio as its products practice the patented inventions in the [IIM] portfolio.” *Id.* at 1.

10. On August 22, 2022, IBM sent a letter to Dr. Ozluturk acknowledging receipt of the August 11 letter. Ex. 3. IBM indicated that it was “willing to consider spending a reasonable amount time to perform a review of up to five IIM assertions provided that IIM resubmits its submission” according to a set of criteria. *Id.* On August 26, 2022, Dr. Ozluturk responded to IBM, explaining that “IIM is happy to work within IBM’s process and provide you help in your evaluation” and requesting to set up an introductory call. Ex. 4. The parties exchanged additional emails on August 22 and 26, 2022, and set up a call for August 31, 2022. *Id.*

11. The parties held a call on August 31, 2022. However, IBM’s process for reviewing IIM’s portfolio proved rigid and limiting. IBM was also unable to provide any clarity on the timeline for IBM’s review process. Unfortunately, the parties were unable to make further progress on pre-suit licensing discussions.

JURISDICTION AND VENUE

12. 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).

13. 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.

14. 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. 9,304,714

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

16. 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. 9,304,714, titled “LUN management with distributed RAID controllers.” The ’714 Patent was duly and legally issued by the United States Patent and Trademark Office on April 5, 2016. A true and correct copy of the ’714 Patent is attached as Exhibit 5.

17. On information and belief, IBM has and continues to make, use, offer for sale, sell, and/or import certain products and services, including without limitation IBM’s Storage Scale System (formerly Elastic Storage System) (ESS 3000, ESS 5000, ESS 3200, ESS 3500) with IBM Storage Scale (formerly Spectrum Scale) software (“Accused Products”), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’714 Patent.

Identification of the Accused Products will be provided in Plaintiff's infringement contentions disclosed pursuant to the Court's scheduling order.

18. The Accused Products satisfy all claim limitations of one or more claims of the '714 Patent. A claim chart comparing exemplary independent claim 12 of the '714 Patent to representative Accused Products is attached as Exhibit 6.

19. IBM has notice of the '714 Patent since at least November 4, 2016 through the Patent Office's Non-Final Rejection identifying the '714 Patent as relevant prior art to IBM's U.S. Patent App. No. 14/710,647, which later issued to IBM as U.S. Patent No. 9,864,531. IBM's long-standing knowledge of the '714 Patent is also evidenced by other IBM U.S. Patents that cite to the '714 Patent and/or the application that issued as the '714 Patent: U.S. Patent No. 10,915,370 and 11,687,492.

20. On August 11, 2022, IIM sent IBM a letter indicating that certain IBM products needed a license to practice certain IIM patents. Ex. 2. IIM explained that its "patent portfolio currently includes nearly 300 US and foreign patents" and that its "preliminary analysis of International Business Machines Corporation's ('IBM') storage products indicates that IBM needs a license to the [IIM] portfolio as its products practice the patented inventions in the [IIM] portfolio." *Id.* at 1. For example, the August 11 letter specifically identified the accused Elastic Storage System ESS 3500 and ESS 5000 as requiring a license. On August 22, 2022, IBM sent a letter to Dr. Ozluturk acknowledging receipt of the August 11 letter. Ex. 3. IBM and IIM engaged in additional communications thereafter, including conducting a call on August 31, 2022. Ex. 4.

21. IBM knowingly and intentionally induces infringement of one or more claims of the '714 Patent in violation of 35 U.S.C. § 271(b). As of August 11, 2022 (or at least as of the time of the filing and service of this complaint), IBM has knowledge of the '714 Patent and the

infringing nature of the Accused Products. Despite this knowledge of the '714 Patent, IBM continues to actively encourage and instruct its customers and end users (for example, through online instruction and other online publications cited in Exhibit 6) to use the Accused Products in ways that directly infringe the '714 Patent. For example, IBM advertises the infringing nature of the Accused Products, such as the Elastic Storage System with declustered array functionality. *See* Ex. 7 (<https://www.redbooks.ibm.com/redpapers/pdfs/redp5253.pdf>) at 1-13; 91-92. IBM also instructs its customers and end users on how to configure and use the Accused Products in an infringing manner, such as the exemplary Elastic Storage System 3500. *See, e.g.*, Ex. 8 (<https://www.redbooks.ibm.com/redbooks/pdfs/sg248538.pdf>). IBM provides these instructions and 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 '714 Patent, thereby specifically intending for and inducing its customers to infringe the '714 Patent through the customers' normal and customary use of the Accused Products.

22. IBM has also infringed, and continues to infringe, one or more claims of the '714 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 '714 Patent, are especially made or adapted to infringe the '714 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use. As of August 11, 2022 (or at least as of the time of filing and service of this complaint), IBM has knowledge of the '714 Patent and the infringing nature of the Accused Products. IBM has been, and currently is, contributorily infringing the '714 Patent in violation of 35 U.S.C. §§ 271(c) and/or (f). For example, the identified hardware and/or software components and functionality in IBM's Storage Scale System

(formerly Elastic Storage System) with Storage Scale (formerly Spectrum Scale) software constitute a material part of the inventions claimed in the '714 Patent, are especially made or adapted to infringe the '714 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use, as demonstrated by the evidence cited above and in Exhibit 6.

23. 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 '714 Patent pursuant to 35 U.S.C. § 271.

24. On information and belief, Plaintiff (including its predecessors and any licensees) complied with 35 U.S.C. § 287 during the relevant time period because Plaintiff, any predecessors assignees to the '714 Patent, and any licensees did not make, offer for sale, or sell products that practice(d) the '714 Patent during the relevant time period or were not required to mark during the relevant time period.

25. As described above, IBM obtained knowledge of IIM's patent portfolio and that certain IBM products infringe IIM's patents as of at least August 11, 2022, but has not ceased its infringing activities. IBM's infringement of the '714 Patent has been and continues to be willful and deliberate. IBM also has knowledge of the '714 Patent by way of this complaint and, to the extent it does not cease its infringing activities, its infringement is and continues to be willful and deliberate.

26. As a result of IBM's direct and indirect infringement of the '714 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.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 8,285,961

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

28. 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. 8,285,961, titled “Dynamic performance virtualization for disk access.” The ’961 Patent was duly and legally issued by the United States Patent and Trademark Office on October 9, 2012. A true and correct copy of the ’961 Patent is attached as Exhibit 9.

29. On information and belief, IBM has and continues to make, use, offer for sale, sell, and/or import certain products and services, including without limitation IBM’s SAN Volume Controller (*e.g.*, SV3, SV2, SA2, and SV1) and DS8000 (*e.g.*, DS8870, DS8880, and DS8900F) products with Easy Tier functionality (“Accused Products”), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’961 Patent. Identification of the Accused Products will be provided in Plaintiff’s infringement contentions disclosed pursuant to the Court’s scheduling order.

30. The Accused Products satisfy all claim limitations of one or more claims of the ’961 Patent. A claim chart comparing exemplary independent claim 1 of the ’961 Patent to representative Accused Products is attached as Exhibit 10.

31. IBM has notice of the ’961 Patent since at least January 5, 2015 through the Patent Office’s List of References Cited by the examiner in connection with its review of IBM’s U.S. Patent App. No. 14/056,061, which later issued to IBM as U.S. Patent No. 9,152,346. IBM’s long-standing knowledge of the ’961 Patent is also evidenced by other IBM U.S. Patents and Patent

Applications that cite to the '961 Patent and/or the application that issued as the '961 Patent: U.S. Patent No. 10,353,774 and U.S. Patent App. No. 2014/0122722.

32. On August 11, 2022, IIM sent IBM a letter indicating that certain IBM products needed a license to practice certain IIM patents. Ex. 2. IIM explained that its “patent portfolio currently includes nearly 300 US and foreign patents” and that its “preliminary analysis of International Business Machines Corporation’s (‘IBM’) storage products indicates that IBM needs a license to the [IIM] portfolio as its products practice the patented inventions in the [IIM] portfolio.” *Id.* at 1. On August 22, 2022, IBM sent a letter to Dr. Ozluturk acknowledging receipt of the August 11 letter. Ex. 3 IBM and IIM engaged in additional communications thereafter, including conducting a call on August 31, 2022. Ex. 4.

33. IBM knowingly and intentionally induces infringement of one or more claims of the '961 Patent in violation of 35 U.S.C. § 271(b). As of August 11, 2022 (or at least as of the time of the filing and service of this complaint), IBM has knowledge of the '961 Patent and the infringing nature of the Accused Products. Despite this knowledge of the '961 Patent, IBM continues to actively encourage and instruct its customers and end users (for example, through online instruction and other online publications cited in Exhibit 10) to use the Accused Products in ways that directly infringe the '961 Patent. For example, IBM advertises that the Accused Products include Easy Tier functionality that allocates data to different storage volumes. *See* Ex. 11 (<https://www.redbooks.ibm.com/redbooks/pdfs/sg248507.pdf>) at 41, Chapter 9. IBM also instructs its customers and end users on how to configure and use the Accused Products in an infringing manner, including through the use of Easy Tier functionality. *See, e.g., id.; see also* Ex. 12 (<https://www.redbooks.ibm.com/redpapers/pdfs/redp5670.pdf>). IBM provides these instructions and 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 '961 Patent, thereby specifically intending for and inducing its customers to infringe the '961 Patent through the customers' normal and customary use of the Accused Products.

34. IBM has also infringed, and continues to infringe, one or more claims of the '961 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 '961 Patent, are especially made or adapted to infringe the '961 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use. As of August 11, 2022 (or at least as of the time of filing and service of this complaint), IBM has knowledge of the '961 Patent and the infringing nature of the Accused Products. IBM has been, and currently is, contributorily infringing the '961 Patent in violation of 35 U.S.C. §§ 271(c) and/or (f). For example, the identified hardware and/or software components in IBM's SAN Volume Controller and DS8000 with Easy Tier functionality constitute a material part of the inventions claimed in the '961 Patent, are especially made or adapted to infringe the '961 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use, as demonstrated by the evidence cited above and in Exhibit 10.

35. 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 '961 Patent pursuant to 35 U.S.C. § 271.

36. On information and belief, Plaintiff (including its predecessors and any licensees) complied with 35 U.S.C. § 287 during the relevant time period because Plaintiff, any predecessors assignees to the '961 Patent, and any licensees did not make, offer for sale, or sell products that

practice(d) the '961 Patent during the relevant time period or were not required to mark during the relevant time period.

37. As described above, IBM obtained knowledge of IIM's patent portfolio and that certain IBM products infringe IIM's patents as of at least August 11, 2022, but has not ceased its infringing activities. IBM's infringement of the '961 Patent has been and continues to be willful and deliberate. IBM also has knowledge of the '961 Patent by way of this complaint and, to the extent it does not cease its infringing activities, its infringement is and continues to be willful and deliberate.

38. As a result of IBM's direct and indirect infringement of the '961 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.

COUNT III

INFRINGEMENT OF U.S. PATENT NO. 8,782,340

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

40. 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. 8,782,340, titled "Hot sheet upgrade facility." The '340 Patent was duly and legally issued by the United States Patent and Trademark Office on July 15, 2014. A true and correct copy of the '340 Patent is attached as Exhibit 13.

41. On information and belief, IBM has and continues to make, use, offer for sale, sell, and/or import certain products and services, including without limitation IBM's SAN Volume

Controller (*e.g.*, SV3, SV2, SA2, and SV1) and DS8000 (*e.g.*, DS8870, DS8880, and DS8900F) with Easy Tier functionality (“Accused Products”), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’340 Patent. Identification of the Accused Products will be provided in Plaintiff’s infringement contentions disclosed pursuant to the Court’s scheduling order.

42. The Accused Products satisfy all claim limitations of one or more claims of the ’340 Patent. A claim chart comparing exemplary independent claim 1 of the ’340 Patent to representative Accused Products is attached as Exhibit 14.

43. IBM has notice of the ’340 Patent since at least November 23, 2016 through the Patent Office’s Non-Final Rejection identifying the published ’340 Patent application as relevant prior art to IBM’s U.S. Patent App. No. 14/250,246, which was published as U.S. Patent App. Pub. No. 2015/0294254.

44. On August 11, 2022, IIM sent IBM a letter indicating that certain IBM products needed a license to practice certain IIM patents. Ex. 2. IIM explained that its “patent portfolio currently includes nearly 300 US and foreign patents” and that its “preliminary analysis of International Business Machines Corporation’s (‘IBM’) storage products indicates that IBM needs a license to the [IIM] portfolio as its products practice the patented inventions in the [IIM] portfolio.” *Id.* at 1. On August 22, 2022, IBM sent a letter to Dr. Ozluturk acknowledging receipt of the August 11 letter. Ex. 3. IBM and IIM engaged in additional communications thereafter, including conducting a call on August 31, 2022. Ex. 4.

45. IBM knowingly and intentionally induces infringement of one or more claims of the ’961 Patent in violation of 35 U.S.C. § 271(b). As of August 11, 2022 (or at least as of the time of the filing and service of this complaint), IBM has knowledge of the ’340 Patent and the

infringing nature of the Accused Products. Despite this knowledge of the '340 Patent, IBM continues to actively encourage and instruct its customers and end users (for example, through online instruction and other online publications cited in Exhibit 14) to use the Accused Products in ways that directly infringe the '340 Patent. For example, IBM advertises that the Accused Products, such as the DS8000 series includes Easy Tier functionality that allocates promotes and demotes data to different storage pools. See Ex. 15 (<https://www.redbooks.ibm.com/redpapers/pdfs/redp5554.pdf>) at 4, 8-9. IBM also instructs its customers and end users on how to configure and use the Accused Products in an infringing manner, including the use of Easy Tier functionality on the exemplary DS8900. See, e.g., *id.*; see also Ex. 16 (<https://www.ibm.com/docs/en/ds8900/9.4.0?topic=tier-easy-automatic-processing>). IBM provides these instructions and 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 '340 Patent, thereby specifically intending for and inducing its customers to infringe the '340 Patent through the customers' normal and customary use of the Accused Products.

46. IBM has also infringed, and continues to infringe, one or more claims of the '340 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 '340 Patent, are especially made or adapted to infringe the '340 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use. As of August 11, 2022 (or at least as of the time of filing and service of this complaint), IBM has knowledge of the '340 Patent and the infringing nature of the Accused Products. IBM has been, and currently is, contributorily infringing the '340 Patent in violation of 35 U.S.C. §§ 271(c) and/or (f). For example, the

identified hardware and/or software components in IBM's SAN Volume Controller and DS8000 with Easy Tier functionality constitute a material part of the inventions claimed in the '340 Patent, are especially made or adapted to infringe the '340 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use, as demonstrated by the evidence cited above and in Exhibit 14.

47. 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 '340 Patent pursuant to 35 U.S.C. § 271.

48. On information and belief, Plaintiff (including its predecessors and any licensees) complied with 35 U.S.C. § 287 during the relevant time period because Plaintiff, any predecessors assignees to the '340 Patent, and any licensees did not make, offer for sale, or sell products that practice(d) the '340 Patent during the relevant time period or were not required to mark during the relevant time period.

49. As described above, IBM obtained knowledge of IIM's patent portfolio and that certain IBM products infringe IIM's patents as of at least August 11, 2022, but has not ceased its infringing activities. IBM's infringement of the '340 Patent has been and continues to be willful and deliberate. IBM also has knowledge of the '340 Patent by way of this complaint and, to the extent it does not cease its infringing activities, its infringement is and continues to be willful and deliberate.

50. As a result of IBM's direct and indirect infringement of the '340 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.

COUNT IV

INFRINGEMENT OF U.S. PATENT NO. 7,672,226

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

52. 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. 7,672,226, titled “Method, apparatus and program storage device for verifying existence of a redundant fibre channel path.” The ’226 Patent was duly and legally issued by the United States Patent and Trademark Office on March 2, 2010. A true and correct copy of the ’226 Patent is attached as Exhibit 17.

53. On information and belief, IBM has and continues to make, use, offer for sale, sell, and/or import certain products and services, including without limitation IBM’s Diamondback tape library, TS4300 tape library, and TS4500 tape library products with compatible tape drives (*e.g.*, LTO Ultrium 9 - 5, and IBM TS1160, TS1155, TS1150, and TS1140) (“Accused Products”), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’226 Patent. Identification of the Accused Products will be provided in Plaintiff’s infringement contentions disclosed pursuant to the Court’s scheduling order.

54. The Accused Products satisfy all claim limitations of one or more claims of the ’226 Patent. A claim chart comparing exemplary independent claim 18 of the ’226 Patent to representative Accused Products is attached as Exhibit 18.

55. IBM has notice of the ’226 Patent since at least October 27, 2005 by citing the published ’226 Patent application on its Information Disclosure statement to the Patent Office when filing U.S. Patent App. No. 11/260,285, which issued to IBM as U.S. Patent No. 7,516,246.

IBM's long-standing knowledge of the '226 Patent is also evidenced by other IBM U.S. Patents that cite to the '226 Patent and/or the application that issued as the '226 Patent: U.S. Patent No. 7,792,148 and U.S. Patent 9,203,876.

56. On August 11, 2022, IIM sent IBM a letter indicating that certain IBM products needed a license to practice certain IIM patents. Ex. 2. IIM explained that its "patent portfolio currently includes nearly 300 US and foreign patents" and that its "preliminary analysis of International Business Machines Corporation's ('IBM') storage products indicates that IBM needs a license to the [IIM] portfolio as its products practice the patented inventions in the [IIM] portfolio." *Id.* at 1. For example, the August 11 letter specifically cited the '226 Patent as a "practiced" patent that required a license. On August 22, 2022, IBM sent a letter to Dr. Ozluturk acknowledging receipt of the August 11 letter. Ex. 3. IBM and IIM engaged in additional communications thereafter, including conducting a call on August 31, 2022. Ex. 4.

57. IBM knowingly and intentionally induces infringement of one or more claims of the '226 Patent in violation of 35 U.S.C. § 271(b). As of August 11, 2022 (or at least as of the time of the filing and service of this complaint), IBM has knowledge of the '226 Patent and the infringing nature of the Accused Products. Despite this knowledge of the '226 Patent, IBM continues to actively encourage and instruct its customers and end users (for example, through online instruction and other online publications cited in Exhibit 18) to use the Accused Products in ways that directly infringe the '226 Patent. For example, IBM advertises that its products provide multiple communication paths between devices, including for path failover functionality. *See* Ex. 19 (<https://www.redbooks.ibm.com/redpieces/pdfs/sg245946.pdf>) at 278; Ex. 20 (<https://www.ibm.com/docs/en/storage-protect/8.1.22?topic=devices-multipath-io-access-tape>). IBM also instructs its customers and end users on how to configure and use the Accused Products

in an infringing manner, including the exemplary TS4500 tape library. *See, e.g., id.; see also* Ex. 21 (<https://www.redbooks.ibm.com/redbooks/pdfs/sg248235.pdf>). IBM provides these instructions and 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 '226 Patent, thereby specifically intending for and inducing its customers to infringe the '226 Patent through the customers' normal and customary use of the Accused Products.

58. IBM has also infringed, and continues to infringe, one or more claims of the '226 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 '226 Patent, are especially made or adapted to infringe the '226 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use. As of August 11, 2022 (or at least as of the time of filing and service of this complaint), IBM has knowledge of the '226 Patent and the infringing nature of the Accused Products. IBM has been, and currently is, contributorily infringing the '226 Patent in violation of 35 U.S.C. §§ 271(c) and/or (f). For example, the identified hardware and/or software components in IBM's Diamondback tape library, TS4300 tape library, and TS4500 tape library constitute a material part of the inventions claimed in the '226 Patent, are especially made or adapted to infringe the '226 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use, as demonstrated by the evidence cited above and in Exhibit 18.

59. 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 '226 Patent pursuant to 35 U.S.C. § 271.

60. On information and belief, Plaintiff (including its predecessors and any licensees) complied with 35 U.S.C. § 287 during the relevant time period because Plaintiff, any predecessors assignees to the '226 Patent, and any licensees did not make, offer for sale, or sell products that practice(d) the '226 Patent during the relevant time period or were not required to mark during the relevant time period.

61. As described above, IBM obtained knowledge of the '226 Patent and that certain IBM products infringe the '226 Patent as of at least August 11, 2022, but has not ceased its infringing activities. IBM's infringement of the '226 Patent has been and continues to be willful and deliberate. IBM also has knowledge of the '226 Patent by way of this complaint and, to the extent it does not cease its infringing activities, its infringement is and continues to be willful and deliberate.

62. As a result of IBM's direct and indirect infringement of the '226 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.

COUNT V

INFRINGEMENT OF U.S. PATENT NO. 8,160,070

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

64. 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. 8,160,070, titled "Fibre channel proxy." The '070 Patent was duly and legally issued by the United States Patent

and Trademark Office on April 17, 2012. A true and correct copy of the '070 Patent is attached as Exhibit 22.

65. On information and belief, IBM has and continues to make, use, offer for sale, sell, and/or import certain products and services, including without limitation IBM's SAN Volume Controller (*e.g.*, SV3, SV2, SA2, and SV1) IBM Storage Virtualize (formerly Spectrum Virtualize) software with IBM Storage Virtualize (formerly Spectrum Virtualize) software ("Accused Products"), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '070 Patent. Identification of the Accused Products will be provided in Plaintiff's infringement contentions disclosed pursuant to the Court's scheduling order.

66. The Accused Products satisfy all claim limitations of one or more claims of the '070 Patent. A claim chart comparing exemplary independent claim 1 of the '070 Patent to representative Accused Products is attached as Exhibit 23.

67. IBM has notice of the '070 Patent since at least November 17, 2014 by citing the '070 Patent on its Information Disclosure statement to the Patent Office in connection with U.S. Patent App. No. 13/916,185, which issued to IBM as U.S. Patent No. 9,274,916. IBM's long-standing knowledge of the '070 Patent is also evidenced by other IBM U.S. Patents that cite to the '070 Patent and/or the application that issued as the '070 Patent: U.S. Patent Nos. 8,938,564, 9,274,989, 9,769,062, 9,779,003, and 9,940,019.

68. On August 11, 2022, IIM sent IBM a letter indicating that certain IBM products needed a license to practice certain IIM patents. Ex. 2. IIM explained that its "patent portfolio currently includes nearly 300 US and foreign patents" and that its "preliminary analysis of International Business Machines Corporation's ('IBM') storage products indicates that IBM needs a license to the [IIM] portfolio as its products practice the patented inventions in the [IIM]

portfolio.” *Id.* at 1. For example, the August 11 letter specifically cited the ’070 Patent as a “practiced” patent that required a license. On August 22, 2022, IBM sent a letter to Dr. Ozluturk acknowledging receipt of the August 11 letter. Ex. 3. IBM and IIM engaged in additional communications thereafter, including conducting a call on August 31, 2022. Ex. 4.

69. IBM knowingly and intentionally induces infringement of one or more claims of the ’070 Patent in violation of 35 U.S.C. § 271(b). As of August 11, 2022 (or at least as of the time of the filing and service of this complaint), IBM has knowledge of the ’070 Patent and the infringing nature of the Accused Products. Despite this knowledge of the ’070 Patent, IBM continues to actively encourage and instruct its customers and end users (for example, through online instruction and other online publications cited in Exhibit 23) to use the Accused Products in ways that directly infringe the ’070 Patent. For example, IBM advertises that its SAN Volume Controller products can present themselves to hosts as a storage provider and to the storage system as a host. *See* Ex. 24 (<https://www.redbooks.ibm.com/redbooks/pdfs/sg248520.pdf>) at 20. IBM also instructs its customers and end users on how to use the Accused Products in an infringing manner, including the exemplary SAN Volume Controller with Spectrum Virtualize. *See, e.g., id.*; *see also* Ex. 25 (<https://www.redbooks.ibm.com/redbooks/pdfs/sg248509.pdf>). IBM provides these instructions and 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 ’070 Patent, thereby specifically intending for and inducing its customers to infringe the ’070 Patent through the customers’ normal and customary use of the Accused Products.

70. IBM has also infringed, and continues to infringe, one or more claims of the ’070 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 '070 Patent, are especially made or adapted to infringe the '070 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use. As of August 11, 2022 (or at least as of the time of filing and service of this complaint), IBM has knowledge of the '070 Patent and the infringing nature of the Accused Products. IBM has been, and currently is, contributorily infringing the '070 Patent in violation of 35 U.S.C. §§ 271(c) and/or (f). For example, the identified hardware and/or software components in IBM's SAN Volume Controllers with IBM Storage Virtualize (formerly Spectrum Virtualize) software constitute a material part of the inventions claimed in the '070 Patent, are especially made or adapted to infringe the '070 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use, as demonstrated by the evidence cited above and in Exhibit 23.

71. 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 '070 Patent pursuant to 35 U.S.C. § 271.

72. On information and belief, Plaintiff (including its predecessors and any licensees) complied with 35 U.S.C. § 287 during the relevant time period because Plaintiff, any predecessor assignees to the '070 Patent, and any licensees did not make, offer for sale, or sell products that practice(d) the '070 Patent during the relevant time period or were not required to mark during the relevant time period.

73. As described above, IBM obtained knowledge of the '070 Patent and that certain IBM products infringe the '070 Patent as of at least August 11, 2022, but has not ceased its infringing activities. IBM's infringement of the '070 Patent has been and continues to be willful and deliberate. IBM also has knowledge of the '070 Patent by way of this complaint and, to the

extent it does not cease its infringing activities, its infringement is and continues to be willful and deliberate.

74. As a result of IBM's direct and indirect infringement of the '070 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.

COUNT VI

INFRINGEMENT OF U.S. PATENT NO. 8,417,871

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

76. 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. 8,417,871, titled "System for increasing storage media performance." The '871 Patent was duly and legally issued by the United States Patent and Trademark Office on April 9, 2013. A true and correct copy of the '871 Patent is attached as Exhibit 26.

77. On information and belief, IBM has and continues to make, use, offer for sale, sell, and/or import certain products and services, including without limitation IBM's SAN Volume Controllers (*e.g.*, SV3, SV2, SA2, and SV1) with IBM Storage Virtualize (formerly Spectrum Virtualize) software ("Accused Products"), that directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the '871 Patent. Identification of the Accused Products will be provided in Plaintiff's infringement contentions disclosed pursuant to the Court's scheduling order.

78. The Accused Products satisfy all claim limitations of one or more claims of the '871 Patent. A claim chart comparing exemplary independent claim 13 of the '871 Patent to representative Accused Products is attached as Exhibit 27.

79. On information and belief, IBM has notice of the '871 Patent since at least September 25, 2014 when identifying U.S. Patent Pub. App. No. 2013/0185526 on its Information Disclosure Statement Form for U.S. Patent App. No. 14/497,243, which issued to IBM as U.S. Patent No. 9,632,927. Specifically, U.S. Patent Pub. App. No. 2013/0185526 arose from U.S. Patent App. No. 12/759,604, which was filed simultaneously with and incorporates by reference U.S. Patent App. No. 12/759,644—the application that issued as the '871 Patent.

80. On August 11, 2022, IIM sent IBM a letter indicating that certain IBM products needed a license to practice certain IIM patents. Ex. 2. IIM explained that its “patent portfolio currently includes nearly 300 US and foreign patents” and that its “preliminary analysis of International Business Machines Corporation’s (‘IBM’) storage products indicates that IBM needs a license to the [IIM] portfolio as its products practice the patented inventions in the [IIM] portfolio.” *Id.* at 1. For example, the August 11 letter specifically cited the '871 Patent as a “practiced” patent that required a license. On August 22, 2022, IBM sent a letter to Dr. Ozluturk acknowledging receipt of the August 11 letter. Ex. 3. IBM and IIM engaged in additional communications thereafter, including conducting a call on August 31, 2022. Ex. 4.

81. IBM knowingly and intentionally induces infringement of one or more claims of the '871 Patent in violation of 35 U.S.C. § 271(b). As of August 11, 2022 (or at least as of the time of the filing and service of this complaint), IBM has knowledge of the '871 Patent and the infringing nature of the Accused Products. Despite this knowledge of the '871 Patent, IBM continues to actively encourage and instruct its customers and end users (for example, through

online instruction and other online publications cited in Exhibit 27) to use the Accused Products in ways that directly infringe the '871 Patent. For example, IBM advertises that its products are able to write data into storage elements sequentially and in consideration of performance indices. *See* Ex. 24 (<https://www.redbooks.ibm.com/redbooks/pdfs/sg248520.pdf>) at 31, Chapter 9. IBM also instructs its customers and end users on how to configure and use the Accused Products in an infringing manner, including through the use of Easy Tier functionality. *See, e.g., id.; see also* Ex. 28 (<https://www.redbooks.ibm.com/redbooks/pdfs/sg248502.pdf>) at 168. IBM provides these instructions and 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 '871 Patent, thereby specifically intending for and inducing its customers to infringe the '871 Patent through the customers' normal and customary use of the Accused Products.

82. IBM has also infringed, and continues to infringe, one or more claims of the '871 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 '871 Patent, are especially made or adapted to infringe the '871 Patent, and are not staple articles or commodities of commerce suitable for non-infringing use. As of August 11, 2022 (or at least as of the time of filing and service of this complaint), IBM has knowledge of the '871 Patent and the infringing nature of the Accused Products. IBM has been, and currently is, contributorily infringing the '871 Patent in violation of 35 U.S.C. §§ 271(c) and/or (f). For example, the identified hardware and/or software components in IBM's SAN Volume Controllers with IBM Storage Virtualize (formerly Spectrum Virtualize) software constitute a material part of the inventions claimed in the '871 Patent, are especially made or adapted to infringe the '871 Patent,

and are not staple articles or commodities of commerce suitable for non-infringing use, as demonstrated by the evidence cited above and in Exhibit 27.

83. 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 '871 Patent pursuant to 35 U.S.C. § 271.

84. On information and belief, Plaintiff (including its predecessors and any licensees) complied with 35 U.S.C. § 287 during the relevant time period because Plaintiff, any predecessor assignees to the '871 Patent, and any licensees did not make, offer for sale, or sell products that practice(d) the '871 Patent during the relevant time period or were not required to mark during the relevant time period.

85. As described above, IBM obtained knowledge of the '871 Patent and that certain IBM products infringe the '871 Patent as of at least August 11, 2022, but has not ceased its infringing activities. IBM's infringement of the '871 Patent has been and continues to be willful and deliberate. IBM also has knowledge of the '871 Patent by way of this complaint and, to the extent it does not cease its infringing activities, its infringement is and continues to be willful and deliberate.

86. As a result of IBM's direct and indirect infringement of the '871 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

a. A judgment in favor of Plaintiff that IBM has infringed, either literally and/or under

the doctrine of equivalents, the '714, '961, '340, '226, '070, and '871 Patents;

b. A judgment and order requiring IBM to pay Plaintiff its damages (past, present, and future), costs, expenses, and pre-judgment and post-judgment interest for IBM's infringement of the '714, '961, '340, '226, '070, and '871 Patents;

c. A judgment that IBM's infringement of the '714, '961, '340, '226, '070, and '871 Patents has been willful and order requiring IBM to pay treble damages for willful infringement;

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

e. A judgment and order requiring IBM 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;

f. 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 IBM; and

g. 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: May 1, 2024

Respectfully submitted,

/s/ Brett E. Cooper

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