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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 NEGOTIATED DATA SOLUTIONS
11 LLC,

12 Plaintiff,

13 vs.

14 DELL, INC.,

15 Defendant.

Case No. C 03-5755 JSW

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

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18 Plaintiff NEGOTIATED DATA SOLUTIONS LLC (“N-Data”) alleges as follows:

19 **NATURE OF THE ACTION**

20 1. N-Data brings this action pursuant to 35 U.S.C. § 1 *et seq.*, seeking injunctive relief
21 and damages against defendant DELL, INC. (“Dell”) for Dell’s infringement of N-Data’s U.S.
22 Patent No. RE39,116 (“the RE116 Patent”) and U.S. Patent No. RE39,405 (“the RE405 Patent”)
23 (collectively the “N-Data Patents”).

24 **THE PARTIES**

25 2. N-Data is an Illinois limited liability company with a principal place of business in
26 this District.

27 3. Defendant Dell is a Delaware corporation, registered to do business in California,
28 with its principal place of business in Round Rock, Texas.

JURISDICTION AND VENUE

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2 4. The Court has jurisdiction over this patent infringement action pursuant to 28 U.S.C.
3 §1331 (federal question jurisdiction) and §1338 (original jurisdiction over cases relating to
4 patents).

5 5. The Court has personal jurisdiction over Dell because it is located in this state and
6 conducts business in this District.

7 6. Venue is proper in this District pursuant to 28 U.S.C. §§1391 and 1400(b).

N-DATA’S PATENTS

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9 7. N-Data is the owner by assignment of all rights and interest in and title to the N-Data
10 Patents as follows:

- 11 • The RE116 Patent is a reissue of U.S. Patent No. 5,617,418 and entitled “Network
12 Link Detection and Generation.” A true and correct copy of the RE116 Patent is
13 attached as Exhibit A and incorporated by reference in this Complaint.
- 14 • The RE405 Patent is a reissue of U.S. Patent No. 5,687,174 and entitled “Network
15 Link Endpoint Capability Detection.” A true and correct copy of the RE405
16 Patent is attached as Exhibit B and incorporated by reference in this Complaint.

CLAIM FOR RELIEF — Infringement of the N-Data Patents

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18 8. Dell has directly infringed, and has contributed to and induced the infringement by
19 others, of the N-Data Patents by making, using, selling and offering for sale products covered by
20 the N-Data Patents.

21 9. N-Data presented Dell with a standard license offer that would have resolved a
22 material portion of Dell’s infringement of the N-Data Patents. N-Data is the third assignee of the
23 patent filings that resulted in the N-Data Patents. The original assignee submitted a first
24 assurance letter to a standards organization. A subsequent assignee, from whom N-Data acquired
25 the N-Data Patents, negotiated a second, substitute assurance letter with that standards
26 organization that offered a larger set of patent rights, broader technical scope, and different terms
27 as compared with the first assurance letter. N-Data has been in negotiations with a third party
28 regarding whether licenses should be offered under the first assurance letter. The negotiations

1 with the third party have not yet concluded. (N-Data also requested that Dell consent to defer
2 amendment to the pleadings in this case pending conclusion of these negotiations; Dell also
3 refused this request.) Regardless of the outcome of the negotiations with the third party,
4 however, N-Data decided to offer licenses under the RE116 and RE405 patents for technologies
5 covered by the first assurance letter in accordance with the terms of a standard license offer. The
6 standard license offer was presented to Dell on May 24, 2007 and is attached as Exhibit C. Dell
7 refused to accept this standard license offer, and instead misconstrued the first assurance letter as
8 rendering Dell “immune from suit” under the N-Data Patents for all possible uses of the patented
9 inventions. A license in accordance with the standard license offer would have settled and
10 released N-Data’s infringement claims against Dell falling within the scope of the standard
11 license.

12 10. Dell’s infringement of the N-Data Patents has injured N-Data, causing N-Data
13 irreparable harm and entitling N-Data to recovery of damages from Dell. Absent entry by the
14 Court of an injunction prohibiting Dell’s further infringement, Dell’s conduct will continue to
15 irreparably harm N-Data.

16 11. Dell, despite its knowledge of the N-Data Patents, continues to engage in infringing
17 activities. Dell’s infringement has been and is willful and deliberate.

18 **PRAYER FOR RELIEF**

19 N-Data respectfully requests that the Court enter judgment in N-Data’s favor as follows:

20 1. Entry of judgment in N-Data’s favor finding that Dell has directly infringed each of
21 the N-Data Patents and/or has contributed to and/or induced infringement of the N-Data Patents;

22 2. An award of damages adequate to compensate N-Data for Dell’s infringement, but in
23 no event less than a reasonable royalty, together with prejudgment interest from the date Dell’s
24 infringement began;

25 3. A permanent injunction prohibiting Dell from infringing, directly or indirectly, any
26 claim of the N-Data Patents;

27 4. A finding that Dell’s infringement has been willful and an award of treble damages
28 pursuant to 35 U.S.C. § 284;

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5. A finding that this case is exceptional and an award to N-Data of its attorneys' fees and costs pursuant to 35 U.S.C. § 285;

6. Such other and further relief as the Court may deem proper and just.

Dated: October 11, 2007

SQUIRE, SANDERS & DEMPSEY L.L.P.

By: /s/ David S. Elkins

David S. Elkins
Jose Luis Martin

Attorneys for Plaintiff
NEGOTIATED DATA SOLUTIONS LLC

DEMAND FOR JURY TRIAL

Plaintiff respectfully demands a trial by jury of all issues so triable.

Dated: October 11, 2007

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By: /s/ David S. Elkins

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