

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

AVID TECHNOLOGY, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 12-627-GMS
	)	
HARMONIC INC.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT**

Plaintiff Avid Technology, Inc., by its attorneys and for its complaint, alleges and states as follows:

**THE PARTIES**

1. Plaintiff Avid Technology, Inc. (“Avid”) is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 75 Network Drive, Burlington, Massachusetts 01803.

2. On information and belief, defendant Harmonic Inc. (“Harmonic”) is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at 4300 North First Street, San Jose, California 95134.

**NATURE OF THE ACTION AND JURISDICTION**

3. This action arises under the patent statutes, 35 U.S.C. § 101 *et seq.*, in particular 35 U.S.C. § 271.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a).

5. This Court has personal jurisdiction over Harmonic at least because Harmonic is a Delaware corporation.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), 1400(b).

**THE PATENTS-IN-SUIT**

7. U.S. Patent No. 5,495,291 (“the ’291 patent”), titled “Decompression System for Compressed Video Data for Providing Uninterrupted Decompressed Video Output,” was duly and legally issued on February 27, 1996. A true and correct copy of the ’291 patent is attached as Exhibit A.

8. Avid is the owner by assignment of the ’291 patent.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,495,291**

9. Avid repeats the allegations contained in paragraphs 1-8.

10. Harmonic has been and now is directly infringing the ’291 patent pursuant to 35 U.S.C. § 271(a) by making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, at least the product identified as “Omneon Spectrum MediaPort.”

11. Harmonic is liable for infringement of the ’291 patent pursuant to 35 U.S.C. § 271(a).

12. Harmonic was on notice and had knowledge of the ’291 patent and that the accused Omneon Spectrum MediaPort infringed the ’291 patent no later than May 18, 2012, when the original Complaint in this action was filed and a copy thereof was e-mailed from Avid to a member of Harmonic’s legal department.

13. On information and belief, Harmonic has been and now is indirectly infringing the ’291 patent pursuant to 35 U.S.C. § 271(b) and/or (c) by knowingly and intentionally inducing infringement and/or contributing to the infringement of the ’291 patent by providing and/or selling

in the United States the product identified above to customers and/or users of that product, and thus is liable for infringement of the '291 patent pursuant to 35 U.S.C. § 271(b) and/or (c).

14. On information and belief, Harmonic induced infringement of claims 17, 18, 19 and 20 of the '291 patent through, among other things, the sale and offer for sale in the United States of the accused Omneon Spectrum MediaPort to direct infringers that include, without limitation, the customers and end users who use Harmonic's Omneon Spectrum MediaPort, with the specific intent that the accused product be used in an infringing manner. In this connection, Harmonic encouraged customers and end-users to use the accused product in an infringing manner, provided operating manuals instructing customers and end-users to use the accused product in an infringing manner, provided training and/or technical support to customers and end users instructing how to use the accused product in an infringing manner, and advertised, marketed and promoted the use of the accused product in an infringing manner.

15. By virtue of having been put on notice of the '291 patent and that the accused Omneon Spectrum MediaPort infringed the '291 patent, Harmonic knowingly induced infringement of claims 17, 28, 19 and 20 of the '291 patent, and possessed specific intent to encourage others' infringement as alleged herein.

16. On information and belief, Harmonic has been and now is indirectly infringing the '291 patent pursuant to 35 U.S.C. § 271(c) by contributing to the infringement of the '291 patent by providing and/or selling the product identified above in the United States to customers and/or users of that product, features of which constitute a material part of one or more claims of the '291 patent, and are not a staple article of commerce suitable for non-infringing uses, and are especially made and or adapted for use in infringing the '291 patent.

17. On information and belief, Harmonic possessed intent to contributorily infringe the '291 patent because it knew that the features of its accused product are especially made or adapted for use in an infringement of one or more claims of the '291 patent and such features are not a staple article of commerce suitable for non-infringing uses.

18. On information and belief, the direct infringers for Harmonic's contributory infringement include, without limitation, the customers and end-users who use Harmonic's accused product, to whom Harmonic sells and offers to sell its accused product. Harmonic has contributed and continues to contribute to these customers' and end-users' infringement by selling and offering to sell the accused product to them, by advertising and promoting its accused product as embodying a material component of the patented invention, and by encouraging and providing instructions to its customers and end-users for using its accused product as embodying a material component of the patented invention.

19. Avid has been damaged by the infringement of the '291 patent by Harmonic.

20. Because of Harmonic's infringing acts, Harmonic is liable to Avid for damages, including Avid's lost profits on sales of its products, price erosion, and/or a reasonable royalty for Harmonic's unauthorized use of the inventions claimed in the '291 patent.

21. The infringement of the '291 patent by Harmonic has caused and will continue to cause irreparable harm to Avid, for which Avid has no adequate remedy at law, unless Harmonic is permanently enjoined from further infringement.

22. Because Harmonic was on notice and had knowledge of the '291 patent and that the accused Omneon Spectrum MediaPort infringed the '291 patent no later than May 18, 2012, and since then has and continues to directly and indirectly infringe one or more claims of the '291 patent in this judicial district and/or elsewhere in the United States, by making, using, offering for

sale, and/or selling within the United States its accused Omneon Spectrum MediaPort product and inducing and contributing the infringement of the '291 patent through use of the accused Omneon Spectrum MediaPort by users and/or customers (direct infringers). Such knowledge on the part of Harmonic, and such continuous and deliberate actions of direct and indirect infringement on the part of Harmonic since gaining this knowledge, demonstrate that Harmonic's conduct has been and continues to be willful.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Avid Technology, Inc. requests that this Court enter an order:

1. adjudging Defendant Harmonic Inc. to have violated 35 U.S.C. § 271 by infringing one or more claims of U.S. Patent No. 5,495,291;
  2. adjudging Defendant Harmonic Inc.'s infringement to have been willful;
  3. awarding Plaintiff damages adequate to compensate for Harmonic Inc.'s infringement in the form of Avid's lost profits, including damages due to price erosion, and/or a reasonable royalty under 35 U.S.C. § 284, or some combination thereof, in an amount to be determined at trial;
  4. finding this action to be an exceptional case under 35 U.S.C. § 285;
  5. awarding Plaintiff its reasonable attorney fees under 35 U.S.C. § 285;
  6. awarding Plaintiff pre-judgment and post-judgment interest;
  7. permanently enjoining Defendant Harmonic Inc. and its officers, agents, servants, employees, and attorneys, and all other persons who are in active concert or participation with them from further infringement of U.S. Patent No. 5,495,291;
- and

8. awarding Plaintiff such other and further relief as this Court deems just and equitable.

**DEMAND FOR A JURY TRIAL**

Plaintiff Avid Technology, Inc. demands a trial by jury on all issues so triable. Avid Technology, Inc. does not consent to a verdict by less than six jurors in this matter.

OF COUNSEL:

Scott S. Balber  
Robert A. Schwinger  
Paul J. Tanck  
CHADBOURNE & PARKE LLP  
30 Rockefeller Plaza  
New York, NY 10112  
(212) 408-5100  
  
David H. Evans  
1200 New Hampshire Ave., NW  
Washington, DC 20036  
(202) 974-5600

/s/ Andrew E. Russell  
John W. Shaw (No. 3362)  
Karen E. Keller (No. 4489)  
Andrew E. Russell (No. 5382)  
SHAW KELLER LLP  
300 Delaware Avenue, Suite 1120  
Wilmington, DE 19801  
(302) 298-0700  
jshaw@shawkeller.com  
kkeller@shawkeller.com  
arussell@shawkeller.com

*Attorneys for Plaintiff Avid Technology, Inc.*

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