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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

TRANXITION, INC., a Delaware
corporation,

Plaintiff,

vs.

NOVELL, INC., a Delaware corporation,

Defendant.

Case No.: 3:12-cv-1404

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff Tranxition, Inc. ("Tranxition") alleges as follows:

PARTIES

1. Tranxition is a Delaware corporation with its principal place of business at Maddox Building, 1231 NW Hoyt Street, Suite 206, Portland, OR 97209.

2. On information and belief, defendant Novell, Inc. ("Defendant") is a Delaware corporation with its principal place of business at 1800 South Novell Place, Provo, UT 84606.

On information and belief, Defendant has appointed its agent for service as follows: The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, DE 19801.

JURISDICTION AND VENUE

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

4. Venue is proper in this District under 28 U.S.C. §§ 1391 (b)-(d) and 1400(b) because Defendant is subject to personal jurisdiction in this District, has committed acts of patent infringement in this District, including, on information and belief, selling or offering to sell infringing products to customers in this District, or has a regular and established place of business in this District.

FACTUAL BACKGROUND

5. Tranxition was founded in 1998. It is currently and has been headquartered in Portland, Oregon.

6. Tranxition was founded to address the problem of migrating a computer "personality" (*i.e.*, the custom settings, files, etc. that users set on their computer) to another computer. Indeed, Tranxition pioneered this market. Tranxition spent a significant amount of time and money developing and refining its technology. As a result of Tranxition's hard work, Tranxition obtained a number of patents, including U.S. Patent No. 6,728,877 (the "'877 patent") and U.S. Patent No. 7,346,766 (the "'766 patent").

7. Tranxition is the owner by assignment of the '877 and '766 patents. The '877 patent is entitled "Method and System for Automatically Transitioning Of Configuration Settings Among Computer Systems." The '877 patent issued on April 27, 2004. A true and correct copy of the '877 patent is attached hereto as Exhibit A. The '766 patent is entitled "Method and System for Automatically Transitioning Of Configuration Settings Among Computer Systems."

The '766 patent issued on March 18, 2008. A true and correct copy of the '766 patent is attached hereto as Exhibit B.

COUNT I

(INFRINGEMENT OF THE '877 PATENT)

8. Defendant has been and still is directly infringing at least claims 1 and 16 of the '877 patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing, without license or authority, software and systems that prepare to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Defendant's ZENWorks Personality Migration (or Migration Assistant) and computer systems using Defendant's ZENWorks Personality Migration (or Migration Assistant). Thus, by making, using, importing, offering for sale, and/or selling such software, Defendant has injured Tranxition and is thus liable to Tranxition for infringement of the '877 patent under 35 U.S.C. § 271(a).

9. Defendant has been and still is indirectly infringing, by way of inducing infringement by others of the '877 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claims 1 and 16 of the '877 patent by preparing to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Defendant's ZENWorks Personality Migration (or Migration Assistant) and computer systems using Defendant's ZENWorks Personality Migration (or Migration Assistant). These software and systems are made, used, imported, offered for sale, and/or sold by direct infringers of the '877 patent in the United States, such as Defendant's customers and end-users of Defendant's customers. Defendant induces others to directly infringe by inducing or encouraging the use of its infringing software. *See, e.g.,* http://www.novell.com/documentation/zenworks7/readme/readme_pm_7.html. Since at least the filing of this complaint, Defendant has had knowledge of the '877 patent and, by continuing the

actions described above, has had the specific intent to, or were willfully blind to the fact that its actions would, induce infringement of the '877 patent. Thus, by making, using, importing, offering for sale, and/or selling infringing products and services, Defendant has injured Tranxition and is thus liable to Tranxition for infringement of the '877 patent under 35 U.S.C. § 271(b).

10. Defendant has also been and still is indirectly infringing, by way of contributing to the infringement by others of the '877 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claims 1 and 16 of the '877 patent by preparing to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Defendant's ZENWorks Personality Migration (or Migration Assistant) and computer systems using Defendant's ZENWorks Personality Migration (or Migration Assistant). These software and systems are made, used imported, offered for sale, and/or sold by direct infringers of the '877 patent in the United States, such as Defendant's customers and end-users of Defendant's customers. Defendant induces others to directly infringe by inducing or encouraging the use of its infringing products and services. *See, e.g.,*

http://www.novell.com/documentation/zenworks7/readme/readme_pm_7.html. Defendant's infringing products and services are a material part of the invention, and are especially made or especially adapted for use in the infringement of the '877 patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least the filing of this complaint, Defendant has had knowledge of the '877 patent and, by continuing the actions described above, has had the specific intent to, or were willfully blind to the fact that its actions would, induce infringement of the '877 patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendant has injured Tranxition and is thus liable to Tranxition for infringement of the '877 patent under 35 U.S.C. § 271(c).

11. To the extent that facts learned in discovery show that Defendant's infringement of the '877 patent is or has been willful, Tranxition reserves the right to request such a finding at time of trial.

12. To the extent necessary, Tranxition has marked its products pursuant to 35 U.S.C. § 287(a).

13. As a result of Defendant's infringement of the '877 patent, Tranxition has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Tranxition will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

14. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the '877 patent, Tranxition will be greatly and irreparably harmed, so that remedies available at law are inadequate to compensate for such harms.

COUNT II

(INFRINGEMENT OF THE '766 PATENT)

15. Defendant has been and still is directly infringing at least claim 1 of the '766 patent, literally and under the doctrine of equivalents, by making, using, selling, offering to sell, or importing, without license or authority, software and systems that prepare to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Defendant's ZENWorks Personality Migration (or Migration Assistant) and computer systems using Defendant's ZENWorks Personality Migration (or Migration Assistant). Thus, by making, using, importing, offering for sale, and/or selling such software, Defendant has injured Tranxition and is thus liable to Tranxition for infringement of the '766 patent under 35 U.S.C. § 271(a).

16. Defendant has been and still is indirectly infringing, by way of inducing

infringement by others of the '766 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claim 1 of the '766 patent by preparing to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Defendant's ZENWorks Personality Migration (or Migration Assistant) and computer systems using Defendant's ZENWorks Personality Migration (or Migration Assistant). These software and systems are made, used, imported, offered for sale, and/or sold by direct infringers of the '766 patent in the United States, such as Defendant's customers and end-users of Defendant's customers. Defendant induces others to directly infringe by inducing or encouraging the use of its infringing software. *See, e.g.*, http://www.novell.com/documentation/zenworks7/readme/readme_pm_7.html. Since at least the filing of this complaint, Defendant has had knowledge of the '766 patent and, by continuing the actions described above, has had the specific intent to, or were willfully blind to the fact that its actions would, induce infringement of the '766 patent. Thus, by making, using, importing, offering for sale, and/or selling infringing products and services, Defendant has injured Tranxition and is thus liable to Tranxition for infringement of the '766 patent under 35 U.S.C. § 271(b).

17. Defendant has also been and still is indirectly infringing, by way of contributing to the infringement by others of the '766 patent, by, among other things, making, using, importing, offering for sale, and/or selling, without license or authority, software and systems that infringe at least claim 1 of the '766 patent by preparing to transfer configuration settings from a source computer to a target computer including, but not limited to, Defendant's manufacture, use, sale, offer for sale or importation of Defendant's ZENWorks Personality Migration (or Migration Assistant) and computer systems using Defendant's ZENWorks Personality Migration (or Migration Assistant). These software and systems are made, used imported, offered for sale, and/or sold by direct infringers of the '766 patent in the United States,

such as Defendant's customers and end-users of Defendant's customers. Defendant induces others to directly infringe by inducing or encouraging the use of its infringing products and services. *See, e.g.,*

http://www.novell.com/documentation/zenworks7/readme/readme_pm_7.html. Defendant's infringing products and services are a material part of the invention, and are especially made or especially adapted for use in the infringement of the '766 patent and are not a staple article or commodity of commerce suitable for substantial noninfringing uses. Since at least the filing of this complaint, Defendant has had knowledge of the '766 patent and, by continuing the actions described above, has had the specific intent to, or were willfully blind to the fact that its actions would, induce infringement of the '766 patent. Thus, by making, using, importing, offering for sale, and/or selling such products and software, Defendant has injured Tranxition and is thus liable to Tranxition for infringement of the '766 patent under 35 U.S.C. § 271(c).

18. To the extent that facts learned in discovery show that Defendant's infringement of the '766 patent is or has been willful, Tranxition reserves the right to request such a finding at time of trial.

19. To the extent necessary, Tranxition has marked its products pursuant to 35 U.S.C. § 287(a).

20. As a result of Defendant's infringement of the '766 patent, Tranxition has suffered monetary damages in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court, and Tranxition will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

21. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, and all others acting or in active concert therewith from infringing the '766 patent, Tranxition will be greatly and irreparably harmed, so that remedies available at law are inadequate to compensate for such harms.

PRAYER FOR RELIEF

Tranxition prays for the following relief:

1. A judgment that Defendant has directly or indirectly infringed (either literally or under the doctrine of equivalents) one or more claims of the '877 and '766 patents;
2. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert or participation with it, from infringing the '877 and '766 patents;
3. An award of damages resulting from Defendant's acts of direct infringement (either literal or under the doctrine of equivalents) in accordance with 35 U.S.C. § 284;
4. A judgment and order requiring Defendant to provide an accounting and to pay supplemental damages to Tranxition, including, without limitation, prejudgment and post-judgment interest; and
5. Any and all other relief to which Tranxition may show itself to be entitled.

JURY TRIAL DEMANDED

Tranxition hereby demands a trial by jury of all issues so triable.

Dated this 28th day of September, 2012.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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