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U.S. DISTRICT COURT
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TX EASTERN-MARSHALL

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

ABSTRAX, INC

Plaintiff,

vs.

DELL, INC , a Delaware corporation;
GATEWAY, INC , a Delaware corporation,

Defendants.

BY _____

CASE NO. **2-07CV-221**

Jury Trial Demanded

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COMPLAINT FOR PATENT INFRINGEMENT

Abstrax, Inc (“Abstrax”) sues Defendants Dell, Inc and Gateway, Inc.

(collectively “Defendants”) and, on information and belief, alleges as follows:

Introduction

1 Plaintiff Abstrax owns the invention described and claimed in United States Patent No 6,240,328 entitled “Manufacturing Method for Assembling Products by Generating and Scheduling Dynamically Assembly Instructions” (the “‘328 patent”) Defendants have used, and continue to use, the methods claimed in the ‘328 patent to manufacture products, including computers, Defendants use, sell, and offer for sale products, including computers, made by the methods claimed in the ‘328 patent, and Defendants contribute to or induce others to infringe the claims of the ‘328 patent without a license or permission from Plaintiff. Plaintiff Abstrax seeks damages for patent infringement and an injunction preventing Defendants from making, using, selling, or offering to sell, and from contributing to and inducing others to make, use, sell, or offer to sell, the technology claimed by the ‘328 patent without Plaintiff’s permission.

Jurisdiction and Venue

2. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271 and 281, *et seq.* The Court has original jurisdiction over this patent infringement action under 28 U.S.C. § 1338(a).

3. Within this judicial district each of the Defendants has committed acts and continues to commit acts that give rise to this action, including making sales of infringing products and offering for sale infringing products. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and § 1400.

Plaintiff Abstrax

4. Plaintiff Abstrax is a corporation existing under and by virtue of the laws of the State of Arizona.

Defendants

5. Defendant Dell, Inc. (“Dell”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in Round Rock, Texas

6. Defendant Gateway, Inc. (“Gateway”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in South Dakota.

First Claim for Patent Infringement
(infringement of the ‘328 patent)

7. Plaintiff incorporates by reference each of the allegations in paragraphs 1 - 6 above and further alleges as follows:

8. The United States Patent and Trademark Office issued the ‘328 patent on May 29, 2001. Attached as Exhibit A is a copy of the ‘328 patent. Through assignment, Plaintiff is the owner of all right, title, and interest in the ‘328 patent, including all rights to pursue and collect damages for past infringements of the patent

9. Defendants Dell and Gateway have infringed, contributed to the infringement, and induced others to infringe the '328 patent and, unless enjoined, will continue to do so, by using the methods claimed in the '328 patent to manufacture products, including computers, by using, selling, or offering for sale products, including computers, made by a process claimed in the '328 patent, and by contributing to or inducing others to infringe the claims of the '328 patent without a license or permission from Plaintiff.

10 Plaintiff has been damaged by Defendants' infringement of the '328 patent and will suffer additional irreparable damage and impairment of the value of its patent rights unless Defendants are enjoined from continuing to infringe the '328 patent

11. The Defendants are and have been willfully infringing one or more claims of the '328 patent

12. Plaintiff is entitled to recover damages from the Defendants to compensate them for the infringement.

13. Plaintiff demands trial by jury of all issues relating to this claim.

WHEREFORE, Plaintiff prays for judgment as follows:

- A. A decree preliminarily and permanently enjoining Defendants, their officers, directors, employees, agents, and all persons in active concert with them, from infringing, and contributing to or inducing others to infringe, the '328 patent;
- B. Compensatory damages for Defendants' infringement of the '328 patent;
- C. Treble the compensatory damages as consequence of Defendants' willful infringement;
- D. Costs of suit and attorneys' fees on the basis that this patent infringement case is exceptional;
- E. Pre-judgment interest; and
- F. For such other relief as justice requires

Dated: June 1, 2007

Respectfully submitted,

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