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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA
BY _____

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PROXYCONN, INC.,
Plaintiff

vs.

MICROSOFT CORPORATION;
HEWLETT-PACKARD COMPANY;
ACER AMERICA CORPORATION;
and DELL INC.,

Defendants.

Case No. SA CV 11 -1681-DOC(JPRx)

CONSOLIDATED

**SECOND AMENDED
CONSOLIDATED COMPLAINT
FOR PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

MICROSOFT
EXHIBIT 1012

ORIGINAL

1 Plaintiff Proxyconn, Inc. ("Proxyconn") alleges as follows:

2 **PARTIES**

3 1. Plaintiff Proxyconn is a California corporation with its principal place
4 of business located at 3211 S. Shannon Street, Santa Ana, California 92704.

5 2. Defendant Microsoft Corporation ("Microsoft") is a Washington
6 corporation with its principal place of business at One Microsoft Way, Redmond,
7 Washington 98052. Microsoft has appointed Corporation Service Company, 2730
8 Gateway Oaks Drive, Suite 100, Sacramento, California 95833, as its agent for
9 service of process.

10 3. Defendant Hewlett-Packard Company ("HP") is a Delaware
11 corporation with its principal place of business at 3000 Hanover Street, Palo Alto,
12 California 94304. HP has appointed CT Corporation System, 818 W. Seventh
13 Street, Los Angeles, California 90017, as its agent for service of process.

14 4. Defendant Acer America Corporation ("Acer") is a California
15 corporation with its principal place of business at 333 West San Carlos Street,
16 Suite 1500, San Jose, California 95110. Acer has appointed C T Corporation
17 System, 818 West 7th Street, Los Angeles, California 90017, as its agent for
18 service of process.

19 5. Defendant Dell Inc. ("Dell") is a Delaware corporation with its
20 principal place of business at 1 Dell Way, Round Rock, Texas 78682. Dell has
21 appointed Corporation Service Company, 2711 Centerville Road, Suite 400,
22 Wilmington, Delaware 19808, as its agent for service of process.

23 6. Microsoft, HP, Acer and Dell shall be referred to collectively as
24 "Defendants."

25 **JURISDICTION AND VENUE**

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

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8. Venue is proper in this District under 28 U.S.C. §§ 1391 (b)-(d) and 1400(b) because each defendant is subject to personal jurisdiction in this District, has committed acts of patent infringement in this District, or has a regular and established place of business in this District.

9. Joinder is appropriate in this case pursuant to 35 U.S.C. §299. On information and belief, Microsoft has agreed to indemnify and defend HP, Acer and Dell because of the relation of Proxyconn's claims to Microsoft's products. Defendants have agreed to the consolidation of the pending actions filed by Proxyconn against Defendants.¹

FACTUAL BACKGROUND

10. Proxyconn was founded in 2001 in Santa Ana, California. It remains based in Santa Ana today.

11. Proxyconn was started to address the problem of demands by users of networks, such as the Internet, to instantly receive content over the network. While other solutions simply relied on increasing available bandwidth, Proxyconn sought a more intelligent solution that could be used with existing technology and bandwidth.

12. As a result, Proxyconn created a technology that used existing technological limitations while making the use of networks effectively many times faster than previously possible. Proxyconn filed a patent application on its novel technology. As a result of that patent application, Proxyconn was awarded United States Patent No. 6,757,717 ("the '717 patent").

13. Proxyconn's technology and method were used by hundreds of ISPs and hundreds of thousands of users in the United States and throughout the world, and is still being used.

¹The actions consolidated into this one are: *Proxyconn, Inc. v. Hewlett-Packard Company*, Case No. SA CV 11-1682-DOC, *Proxyconn, Inc. v. Dell Inc.*, Case No. SA CV 11-1683-DOC, *Proxyconn, Inc. v. Acer America Corporation*, Case No. SA CV 11-1684-DOC and *Proxyconn, Inc. v. Hewlett-Packard Company*, Case No. SA CV 11-1685-DOC.

1 14. Proxyconn is the owner by assignment of the '717 patent. The '717
2 patent is entitled "System and Method for Data Access." The '717 patent issued on
3 June 29, 2004. A true and correct copy of the '717 patent is attached hereto as
4 Exhibit A.

5 **COUNT I**

6 **(Infringement of U.S. Patent No. 6,757,717 Against Microsoft)**

7 15. Microsoft has been and still is directly (literally and under the doctrine
8 of equivalents) infringing at least claims 1, 10, 11 and 22 of the '717 patent,
9 literally and under the doctrine of equivalents, by making, using, selling, offering
10 to sell, or importing, without license or authority, software that creates, transmits,
11 receives, or compares digital digests on data, including, but not limited to, its use
12 of Remote Differential Compression ("RDC") technology in at least its Windows
13 Server 2003 R2, Windows Server 2008, Windows Small Business Server 2003,
14 Windows Small Business Server 2008, Windows Small Business Server 2011,
15 Windows XP with Service Pack 3, Windows Vista, and Windows 7 operating
16 systems. For example, on information and belief, Microsoft uses its Distributed
17 File System ("DFS") Replication product, which uses RDC, on its servers. *See*
18 [http://msdn.microsoft.com/en-](http://msdn.microsoft.com/en-us/library/windows/desktop/bb540025%28v=vs.85%29.aspx)
19 [us/library/windows/desktop/bb540025%28v=vs.85%29.aspx](http://msdn.microsoft.com/en-us/library/windows/desktop/bb540025%28v=vs.85%29.aspx). Attached as Exhibit
20 B to this complaint is an exemplary chart illustrating how Microsoft's making,
21 using, selling, offering to sell, or importing, without license or authority, DFS
22 Replication and RDC infringes claims 1, 10, 11 and 22 of the '717 patent.

23 16. Microsoft has been and still is indirectly infringing, by way of
24 inducing infringement by others of the '717 patent, by, among other things,
25 making, using, importing, offering for sale, and/or selling, without license or
26 authority, software for use in systems that thereby fall within the scope of at least
27 claims 1, 10, 11 and 22 of the '717 patent. Such software includes, but is not
28 limited to, the Remote Differential Compression ("RDC") technology used in at

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1 least its Windows Server 2003 R2, Windows Server 2008, Windows Small
2 Business Server 2003, Windows Small Business Server 2008, Windows Small
3 Business Server 2011, Windows XP with Service Pack 3, Windows Vista, and
4 Windows 7 operating systems. This software is used in infringing computer
5 systems made, used, imported, offered for sale, and/or sold by direct infringers of
6 the '717 patent in the United States, such as computer manufacturers (for example,
7 HP, Dell and Acer) and end-users (for example, customers that purchase
8 Microsoft's software and use it in their computer systems). The systems using
9 Microsoft's software include a sender computer and a receiver computer
10 communicating through a network, with each computer equipped with a method
11 for creating digital digests on data and the receiving computer including a means
12 for comparing digital digests. Microsoft induces others to directly infringe by
13 inducing or encouraging the use of its infringing RDC technology. *See, e.g.,*
14 <http://technet.microsoft.com/en-us/library/cc754372.aspx> and
15 [http://msdn.microsoft.com/en-](http://msdn.microsoft.com/en-us/library/windows/desktop/aa372963%28v=VS.85%29.aspx)
16 [us/library/windows/desktop/aa372963%28v=VS.85%29.aspx](http://msdn.microsoft.com/en-us/library/windows/desktop/aa372963%28v=VS.85%29.aspx). Since at least
17 November 3, 2011, when the original complaint in *Proxyconn, Inc. v. Microsoft*
18 *Corp. et al.*, Case No. 11-cv-1681-DOC was filed, Microsoft has had knowledge of
19 the '717 patent and, by continuing the actions described above, has had the specific
20 intent to, or were willfully blind to the fact that its actions would, induce
21 infringement of the '717 patent. *See, e.g.,* [http://technet.microsoft.com/en-](http://technet.microsoft.com/en-us/library/cc754372.aspx)
22 [us/library/cc754372.aspx](http://technet.microsoft.com/en-us/library/cc754372.aspx) and [http://msdn.microsoft.com/en-](http://msdn.microsoft.com/en-us/library/windows/desktop/aa372963%28v=VS.85%29.aspx)
23 [us/library/windows/desktop/aa372963%28v=VS.85%29.aspx](http://msdn.microsoft.com/en-us/library/windows/desktop/aa372963%28v=VS.85%29.aspx). Indeed, Microsoft
24 has been aware of Proxyconn and its products since at least the summer of 2003,
25 when Microsoft reviewed Proxyconn's technology. On information and belief, as a
26 result of its awareness of Proxyconn and its technology, Microsoft has been aware
27 of the patent since it issued on June 29, 2004. Thus, by making, using, importing,
28 offering for sale, and/or selling such software, Microsoft has injured Proxyconn

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