

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DAEDALUS BLUE LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Civil Action No.: 6:20-CV-1152-ADA

JURY TRIAL DEMANDED

DAEDALUS BLUE, LLC'S PRELIMINARY INFRINGEMENT CONTENTIONS

I. PRELIMINARY STATEMENT

Plaintiff Daedalus Blue, LLC (“Daedalus”) hereby submits these Preliminary Infringement Contentions to Defendant Microsoft Corporation (“Microsoft”).

These Preliminary Infringement Contentions are based on current knowledge, understanding, and belief as to the facts and information available as of the date of this disclosure. Daedalus has not completed its investigation of the facts in this case. Certain facts are not readily ascertainable through a reasonable investigation of publicly available information, including the source code and internal documentation for the accused instrumentalities. Accordingly, certain of the contentions herein are based on information and belief based on a review of publicly available documents and information, subject to further investigation in discovery. Discovery has not yet begun. Additional discovery and investigation, including discovery from third parties, may require Daedalus to further supplement or modify its disclosures, its assertion of claims, its infringement contentions, and/or the evidence that Daedalus will use to support its infringement allegations. Plaintiff expressly reserves the right to seek leave from the Court to open third-party discovery to obtain documents and information relating to conception and reduction to practice, which may establish earlier priority dates than those identified herein.

Plaintiff’s contentions regarding infringement of specific claims will depend on the claim construction ultimately adopted by the Court. Because said construction has not yet occurred, Plaintiff’s contentions herein are preliminary, and subject to change based upon the Court’s construction.

These disclosures are made without waiving any applicable privilege, immunity, or objection which Daedalus is entitled to assert, including the attorney-client privilege and the attorney work product doctrine and applicable privacy privileges.

II. DAEDALUS' DISCLOSURES

Pursuant to the Court's Sample Order Governing Proceedings in Patent Cases, Plaintiff Daedalus asserts that the Patents-in-Suit claim priority to, and are entitled to priority date at least as early as:

- February 7, 2003 for each asserted claim of U.S. Patent No. 7,177,886 (“the ’886 Patent”);
- November 14, 2003 for each asserted claim of U.S. Patent No. 7,437,730 (“the ’730 Patent”);
- January 3, 2007 for each asserted claim of U.S. Patent No. 8,381,209 (“the ’209 Patent”);
- April 14, 2010 for each asserted claim of U.S. Patent No. 8,572,612 (“the ’612 Patent”); and
- March 14, 2003 for each asserted claim of U.S. Patent No. 8,671,132 (“the ’132 Patent”).

Plaintiff is not in possession of the documents evidencing conception and reduction to practice except for the file histories, produced herewith as Bates Nos. DBMSFT000001 - DBMSFT001238, which establish constructive reduction to practice as of the earliest filing date listed thereon. As noted above, Daedalus intends to seek third party discovery relating to the conception and reduction to practice for each of the Asserted Patents. Daedalus will supplement these contentions when such information becomes available.

III. DAEDALUS' INFRINGEMENT CONTENTIONS

Daedalus preliminarily asserts the following patents (collectively, “Asserted Patents”) and claims (collectively, “Asserted Claims”), and attaches claim charts hereto:

Appendix	United States Patent No.	Asserted Claim(s)
A	7,177,886	1, 2, 3, 6, 7, 10
B	7,437,730	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16
C	8,381,209	1, 2, 3, 4, 5, 6, 7, 8
D	8,572,612	1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15
E	8,671,132	1, 2, 3, 4, 8, 9, 10, 15, 16 17 18, 21, 22, 23, 24, 25, 26, 27

References to instrumentalities in the attached claim charts are exemplary only and should not be construed as limiting the scope of any Asserted Claims. Daedalus asserts that each element of each Asserted Claim is literally present in the Accused Instrumentalities. In addition, depending on the Court’s claim construction, and to the extent any of the elements of the Asserted Claims may later be determined not to be literally present, the doctrine of equivalents may also apply.

Daedalus reserves the right to amend its assertion of particular claims based on the receipt of discovery in the matter, including, for example, additional details concerning the specific structures, operation, and functionality in the Accused Instrumentalities, which information is not available via an inspection of public materials.

Microsoft directly infringes the system and apparatus claimed in the Asserted Claims of the ’886 Patent under 35 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States servers, including in Azure, that utilize Microsoft SQL Server 2012, 2014, 2016, 2017, 2019, and Azure SQL Server Always On Availability Groups (“Availability Groups”), including Microsoft cloud-based products or technologies that run on the SQL Server database engine, and by making, using selling, and/or offering for sale Azure SQL Databases, SQL Server on Azure Virtual Machines, and Azure SQL Managed Instances, and all reasonably similar products or technologies with the Availability Groups feature (“the ’886 Accused Instrumentalities”). On information and belief, to which further discovery will

provide evidence, Microsoft makes and uses the '886 Accused Instrumentalities in the regular course of its business, including with regard to its Cloud based services, such as Office365, and Azure.

Microsoft directly infringes the system and apparatus claimed in the Asserted Claims of the '730 Patent under 35 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States the Microsoft Azure, including Azure's IaaS, PaaS, and SaaS cloud services, and other cloud-based products or technologies that implement and/or run Azure IaaS, PaaS, or SaaS, as well as all reasonably similar products or technologies, including, for example, Microsoft Teams, Sharepoint Online, Office Online, Xbox Live Services, Office365, and other Microsoft branded services that run on Azure Cloud Services or Azure Service Fabric platforms, in conjunction with at least the following features of the Azure platform: Azure Service Fabric, Cluster Resource Manager, Azure Kubernetes Service, cluster autoscaler component, horizontal pod autoscaler (HPA), Azure Resource Manager, Compute Resource Provider (CRP), Microsoft.Compute, Availability Zones, Availability Sets, Virtual Machine Scale Sets, Azure Monitor, Autoscale, vertical scaling, Azure Load Balancer, Fabric Controller, front end, Orchestrator, SmartHarvest, ElasticVMs, cpugroup, Resource Central, compute throttling, Azure Monitor, and all reasonably similar products or technologies (“'730 Accused Instrumentalities”).

Microsoft directly infringes the methods claimed in the Asserted Claims of the '209 Patent under 35 U.S.C. § 271(a) by making, using, selling, offering for sale, and/or importing into the United States the technology referred to by Defendant as Site Recovery, node healing and VM Migration, in conjunction with at least the following features of the Azure platform: hypervisor firewall rules, machine config or infrastructure rules, role configuration file rules,

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