

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

SOVEREIGN PEAK VENTURES, LLC,

Plaintiff,

v.

**HEWLETT PACKARD ENTERPRISE
COMPANY,**

Defendant.

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JURY TRIAL DEMANDED

C.A. NO. 2:23-cv-00009

PLAINTIFF'S PRELIMINARY INFRINGEMENT CONTENTIONS

Pursuant to P.R. 3-1 and 3-2, Sovereign Peak Ventures, LLC ("SPV" or "Plaintiff") submits its disclosure of asserted claims and infringement contentions to Defendant Hewlett Packard Enterprise Company ("HPE" or "Defendant").

The following asserted claims and contentions are based upon SPV's good faith evaluation of information known to SPV at this time. SPV reserves its right to supplement and/or amend these Asserted Claims and Infringement Contentions in view of information and/or documents that may be obtained during discovery, further investigation, the Court's claim construction ruling, applicable case law and authorities, and/or any other reasons permitted under the Court's order, the Patent Rules, and the Federal Rules of Civil Procedure. *See Eolas Techs. Inc. v. Amazon.com, Inc.*, No. 6:15-CV-01038, 2016 WL 7666160, at *2 (E.D. Tex. Dec. 5, 2016) ("[G]iven Plaintiff's assertion that Defendants have not produced all documents and code reflecting their server architectures, it is unreasonable to expect Plaintiff to draft ICs in great detail [C]ontentions should become more detailed with the conclusion of fact discovery and claim construction.").

I. P.R. 3-1 Disclosure of Asserted Claims and Infringement Contentions

- (a) Each claim of each patent in suit that is allegedly infringed by each opposing party;**

By making, using, testing, offering for sale, selling, and/or importing any of the devices addressed in Exhibits A-D, Defendant directly and/or indirectly infringes U.S. Patent No. 7,796,512 (the “’512 patent”), U.S. Patent No. 8,045,531 (the “’531 patent”), U.S. Patent No. 8,270,384 (the “’384 patent”), and U.S. Patent No. 8,467,723 (the “’723 patent”) (collectively, the “patents-in-suit”). Based on information presently available, Plaintiff contends that Defendant infringes the claims identified in Exhibits A-D, including the following claims of the patents-in-suit:

1. Claim 1 of the ’512 patent;
2. Claims 1, 7, and 13 of the ’531 patent;
3. Claims 1, 3, 4, and 6 of the ’384 patent; and
4. Claims 5-7 and 9 of the ’723 patent.

- (b) Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of each opposing party of which the party is aware. This identification shall be as specific as possible. Each product, device, and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;**

The Accused Instrumentalities of which SPV is aware are identified below. Plaintiff reserves the right, in response to discovery or as otherwise permitted, to supplement its identification of Accused Instrumentalities.

1. The Accused Instrumentalities for each asserted claim of the ’512 patent are identified in Exhibit A hereto.

2. The Accused Instrumentalities for each asserted claim of the '531 patent are identified in Exhibit B hereto.
3. The Accused Instrumentalities for each asserted claim of the '384 patent are identified in Exhibit C hereto.
4. The Accused Instrumentalities for each asserted claim of the '723 patent are identified in Exhibit D hereto.

Plaintiff expressly reserves the right to seek leave of Court to augment and supplement these disclosures after discovery from Defendant, or as permitted under the Patent Rules. Plaintiff expects that this disclosure may be subject to amendment or supplementation to identify and accuse additional products developed or made available after the date on which these contentions are served, or of which Plaintiff was not aware at the time that these contentions were prepared. Plaintiff reserves the right to seek leave of Court to augment and supplement this disclosure after discovery from Defendant, or as permitted under the Patent Rules.

- (c) **A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or materials(s) in the Accused Instrumentality that performs the claimed functions;**

Charts identifying where each element of the asserted claims is found within each Accused Instrumentality are included as Exhibits A-D accompanying this document. The charts are based on publicly available information currently accessible to Plaintiff. Discovery has yet to begin, and Plaintiff reserves the right to amend its list of Accused Instrumentalities or charts after discovery from Defendant, or as permitted by the Court, the Patent Rules, or the Federal Rules of Civil Procedure.

(d) Whether each element of each asserted claim is claimed to be literally present or present under the doctrine of equivalents in the Accused Instrumentality;

As the Court has not construed any claim term, it is not yet clear whether Plaintiff will rely on the doctrine of equivalents. Accordingly, Plaintiff reserves the right to amend its infringement contentions as necessary. Based on its current understanding of the claim language and publicly available information pertaining to the Accused Instrumentalities, and without notice of any claim construction or non-infringement position from Defendant, Plaintiff asserts that Defendant literally infringes each element of the asserted claims. However, any claim element not literally present in or performed by the Accused Instrumentalities is satisfied under the doctrine of equivalents because any difference between such claim element and the accused element is insubstantial. In other words, the accused element performs substantially the same function, in substantially the same way, to achieve substantially the same result.

(e) For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;

Each of the patents-in-suit is entitled to a priority date no later than the filing date of the earliest application to which it claims priority. To date, Plaintiff believes the patents-in-suit have the following priority dates. Plaintiff reserves the right to amend its list of priority dates as additional information becomes available, such as in response to discovery from third parties.

- The asserted claim of the '512 patent are entitled to a priority date at least as early as March 14, 2005.
- The asserted claim of the '531 patent are entitled to a priority date at least as early as March 2, 2004.
- The asserted claim of the '384 patent are entitled to a priority date at least as early as March 2, 2004.

- The asserted claims of the '723 patent are entitled to a priority date at least as early as July 19, 2007.

(f) If a party claiming patent infringement wishes to preserve the right to reply, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim.

Plaintiff is not aware of any apparatus, product, device, process, method, act, or other instrumentality of its own that practices the claimed inventions.

II. P.R. 3-2 Document Production Accompanying Disclosure

(a) Plaintiff is not presently aware of any non-privileged documents sufficient to evidence discussion with, disclosure to, or other manner of providing to a third party, or sale of or offer to sell, the claimed inventions prior to the date of application for the patents-in-suit.

(b) Plaintiff is not presently aware of any non-privileged documents that evidence conception, reduction to practice, design, and development of each claimed invention that were created on or before the above referenced dates for each of the patents-in-suit. Plaintiff notes that documents responsive to P.R. 3-2(b) may be in the possession of the inventors and/or original assignees of the patents-in-suit. In the event that discovery leads to documents that evidence conception, reduction to practice, design, and development of any claimed invention that were created on or before the date of application for the patents-in-suit, Plaintiff reserves the right to claim such date.

(c) Copies of the file histories for the patents-in-suit are produced herewith and bear production numbers as follows: SPV-HPE000001 – SPV-HPE000416; SPV-HPE000459 – SPV-HPE000934; SPV-HPE000961 – SPV-HPE001272; SPV-HPE001298 – SPV-HPE001512.

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