

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

FIFTH GENERATION COMPUTER
CORPORATION,

Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant.

Case No. _____

DEMAND FOR JURY TRIAL

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Fifth Generation Computer Corporation ("FGC"), for its Complaint against Defendant, International Business Machines Corporation ("IBM"), alleges:

PARTIES, JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

2. Plaintiff FGC is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business at 445 Park Avenue, 9th Floor, New York, New York, 10022.

3. Defendant IBM is a corporation organized and existing under the laws of the State of New York, with a principal place of business at 1 New Orchard Road, Armonk, New York 10504-1722.

4. This Court has subject matter jurisdiction over FGC's claims under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over IBM by virtue of, among other things, IBM's contacts with the State of Texas and this District. On information and belief, IBM offers for sale and sells products and services through its sales force and/or its website. IBM's activities constitute patent infringement throughout the United States, within the State of Texas, and within this District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(b), because IBM has committed acts of infringement and has regularly conducted business in this District, and is subject to personal jurisdiction in this District.

CLAIM FOR RELIEF

7. FGC has designed and built computer Multiprocessor Servers (MP Servers) and Speech Recognition Servers, utilizing advanced parallel processor designs and speech recognition technology, for use by telephone companies in critical applications such as directory assistance.

8. FGC is the owner of three United States patents directed to parallel processing technology.

9. In the 1980s, Dr. Salvatore Stolfo, a tenured professor in the computer science department at Columbia University, made significant advancements in the field of parallel processing technology.

10. On September 6, 1986, the Trustees of Columbia University ("Columbia") filed two United States patent applications directed to certain aspects of Dr. Stolfo's parallel processing work.

11. On June 27, 1989, the United States Patent and Trademark Office ("USPTO") duly and legally issued United States Letters Patent No. 4,843,540 ("the '540 Patent"), entitled

“Parallel Processing Method.” Columbia was the original assignee of the ‘540 Patent. A true and correct copy of the ‘540 Patent is attached as Exhibit A to this Complaint.

12. On August 22, 1989, the USPTO duly and legally issued United States Letters Patent No. 4,860,201 (“the ‘201 Patent”), entitled “Binary Tree Parallel Processor.” Columbia was the original assignee of the ‘201 Patent. A true and correct copy of the ‘201 Patent is attached as Exhibit B to this Complaint.

13. On or about October 22, 1993, Columbia assigned its entire right, title, and interest in and to Dr. Stolfo’s parallel processing work, including the ‘540 Patent and ‘201 Patent, to Dr. Stolfo.

14. On or about November 26, 1996, Dr. Stolfo assigned his entire right, title, and interest in and to various patents and copyrights, including the ‘540 Patent and ‘201 Patent, to FGC. FGC is currently the owner of the entire right, title, and interest in and to the ‘540 Patent and ‘201 Patent.

15. In December 1993, James L. Maddox became Director of Engineering at FGC. Mr. Maddox has been a leader in the fields of system engineering and computer design since the 1950s, when he was Chief Engineer at the Philco Corporation.

16. While at FGC, Mr. Maddox made further innovations in the field of parallel processing technology. On October 15, 1997, FGC filed a United States patent application directed to certain aspects of Dr. Maddox’s parallel processing work.

17. On December 7, 1999, the USPTO duly and legally issued United States Letters Patent No. 6,000,024 (“the ‘024 Patent”), entitled “Parallel Computing System.” FGC is currently the owner of the entire right, title, and interest in and to the ‘024 Patent. A true and correct copy of the ‘024 Patent is attached as Exhibit C to this Complaint.

18. On April 13, 1994, FGC entered into an agreement with IBM entitled "Product and Service Sales Agreement 22B93162 IBM Corporation and Fifth Generation Computer Corporation" ("Agreement"). Pursuant to the Agreement, IBM was to manufacture and sell certain deliverables to FGC. FGC provided IBM with proprietary and confidential technical information to assist IBM in providing such deliverables. FGC eventually exercised its rights under the Agreement and terminated the Agreement in 1997.

19. In 1999, IBM initiated a project, known as the "Blue Gene" project, to develop massively parallel supercomputers.

20. As part of the Blue Gene project, IBM began developing the Blue Gene/L supercomputer sometime between 1999 and 2001.

21. In 2003, FGC first learned of IBM's Blue Gene/L supercomputer and determined that claims of the '540 Patent, '201 Patent, and '024 patent read on the Blue Gene/L supercomputer.

22. FGC first notified IBM of its findings on or about August 25, 2003, and IBM has thus known of the '540 Patent, '201 Patent, and '024 patent since at least that date.

23. FGC has engaged in repeated negotiations with IBM relating to IBM possibly taking a license from FGC under the '540 Patent, '201 Patent, and '024 Patent. During the negotiations, FGC and IBM communicated via telephone, letter and email, as well as during six separate, face-to-face meetings at IBM's facilities. IBM has not taken a license under any of the patents.

24. The Blue Gene/L supercomputer is generally described in, for example, N.R. Adiga et al, *An Overview of the BlueGene/L Supercomputer*, Supercomputing, ACM/IEEE 2002

Conference (2002). A true and correct copy of this reference is attached as Exhibit D to this Complaint.

25. On information and belief, IBM has been offering to sell and/or selling Blue Gene supercomputers, including the Blue Gene/L supercomputer and subsequently the Blue Gene/P supercomputer, throughout the United States since at least 2005.

26. On information and belief, and as set forth in more detail below, IBM infringed one or more claims of the '540 Patent, '201 Patent, and '024 Patent under 35 U.S.C. § 271 (a), (b), and/or (c) by, *inter alia*, by making, using, selling, offering for sale in the United States and/or importing into the United States, including within this District, certain products and services that utilize FGC's claimed inventions, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service. Further, on information and belief, IBM has known of the existence of the '540 Patent, '201 Patent, and '024 Patent, and their acts of infringement as set out in the following paragraphs have been deliberate and willful, and in reckless disregard of FGC's patent rights.

PATENT INFRINGEMENT – THE '540 PATENT

27. FGC incorporates herein the allegations of Paragraphs 1 through 26.

28. Without license or authorization, IBM has directly infringed the '540 Patent in violation of 35 U.S.C. § 271(a), by making, using, selling, offering for sale in the United States and/or importing into the United States, including within this judicial District, certain products and services that embody or employ one or more claims of the '540 patent, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service.

29. Without license or authorization, IBM has indirectly infringed the '540 patent in violation of 35 U.S.C. § 271(b) by actively and knowingly inducing others to directly infringe

one or more claims of the '540 Patent with the intent to encourage infringement. For example, IBM has offered for sale and sold within the United States products and services that embody or employ one or more claims of the '540 Patent, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service, knowing that use of these products and services would result in direct infringement of one or more claims of the '540 Patent.

30. Without license or authorization, IBM has indirectly infringed the '540 Patent in violation of 35 U.S.C. §271(c), by contributing to the direct infringement of the '540 Patent by others. For example, IBM has offered to sell and/or sold within the United States products and services that embody or employ one or more claims of the '540 Patent, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service, knowing these products and services are especially made or adapted for use in embodying or employing one or more claims of the '540 Patent. These products and services are non-staple articles of commerce not suitable for substantial non-infringing uses.

31. IBM's infringement is and, at all times, has been deliberate, willful, and wanton, and as a result constitutes willful infringement of the '540 Patent. FGC is entitled to treble damages pursuant to 35 U.S.C. § 284. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of appropriate attorneys' fees is justified.

32. FGC has been damaged by IBM's infringement of the '540 Patent in an amount to be proven at trial and in a manner and amount that cannot be fully measured or compensated in economic terms. The actions of IBM have damaged FGC's business, market, reputation, and goodwill, and may have discouraged customers from dealing with FGC.

PATENT INFRINGEMENT – THE ‘201 PATENT

33. FGC incorporates herein the allegations of Paragraphs 1 through 26.

34. Without license or authorization, IBM has directly infringed the ‘201 Patent in violation of 35 U.S.C. § 271(a), by making, using, selling, offering for sale in the United States and/or importing into the United States, including within this judicial District, certain products and services that embody or employ one or more claims of the ‘201 Patent, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service.

35. Without license or authorization, IBM has indirectly infringed the ‘201 Patent in violation of 35 U.S.C. § 271(b) by actively and knowingly inducing others to directly infringe one or more claims of the ‘201 Patent with the intent to encourage infringement. For example, IBM has offered for sale and sold within the United States products and services that embody or employ one or more claims of the ‘201 Patent, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service, knowing that use of these products and services would result in direct infringement of one or more claims of the ‘201 Patent.

36. Without license or authorization, IBM has indirectly infringed the ‘201 Patent in violation of 35 U.S.C. §271(c), by contributing to the direct infringement of the ‘201 Patent by others. For example, IBM has offered to sell and/or sold within the United States products and services that embody or employ one or more claims of the ‘201 Patent, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service, knowing these products and services are especially made or adapted for use in embodying or employing one or more claims of the ‘201 Patent. These products and services are non-staple articles of commerce not suitable for substantial non-infringing uses.

37. IBM's infringement is and, at all times, has been deliberate, willful, and wanton, and as a result constitutes willful infringement of the '201 Patent. FGC is entitled to treble damages pursuant to 35 U.S.C. § 284. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of appropriate attorneys' fees is justified.

38. FGC has been damaged by IBM's infringement of the '201 Patent in an amount to be proven at trial and in a manner and amount that cannot be fully measured or compensated in economic terms. The actions of IBM have damaged FGC's business, market, reputation, and goodwill, and may have discouraged customers from dealing with FGC.

PATENT INFRINGEMENT – THE '024 PATENT

39. FGC incorporates herein the allegations of Paragraphs 1 through 26.

40. Without license or authorization, IBM has been and is directly infringing the '024 Patent in violation of 35 U.S.C. § 271(a), by making, using, selling, offering for sale in the United States and/or importing into the United States, including within this judicial District, certain products and services that embody or employ one or more claims of the '024 Patent, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service.

41. Without license or authorization, IBM has been and is indirectly infringing the '024 Patent in violation of 35 U.S.C. § 271(b) by actively and knowingly inducing others to directly infringe one or more claims of the '024 Patent with the intent to encourage infringement. For example, IBM has been and is offering for sale and selling within the United States products and services that embody or employ one or more claims of the '024 Patent, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service,

knowing that use of these products and services would result in direct infringement of one or more claims of the '024 Patent.

42. Without license or authorization, IBM has been and is indirectly infringing the '024 Patent in violation of 35 U.S.C. §271(c), by contributing to the direct infringement of the '024 Patent by others. For example, IBM has been and is offering to sell and/or selling within the United States products and services that embody or employ one or more claims of the '024 Patent, including the Blue Gene supercomputer architecture and the Deep Computing Capacity on Demand service, knowing these products and services are especially made or adapted for use in embodying or employing one or more claims of the '024 Patent. These products and services are non-staple articles of commerce not suitable for substantial non-infringing uses.

43. IBM's infringement is and, at all times, has been deliberate, willful, and wanton, and as a result constitutes willful infringement of the '024 Patent. FGC is entitled to treble damages pursuant to 35 U.S.C. § 284. This is an exceptional case within the meaning of 35 U.S.C. § 285, and the award of appropriate attorneys' fees is justified.

44. FGC has been, and will continue to be, damaged by IBM's infringement of the '024 Patent in an amount to be proven at trial and in a manner and amount that cannot be fully measured or compensated in economic terms. The actions of IBM have damaged, and will continue to damage, FGC's business, market, reputation, and goodwill, and may discourage customers from dealing with FGC. Such irreparable damage will continue unless the acts of IBM are enjoined during the pendency of this action and thereafter.

PRAYER FOR RELIEF

WHEREFORE, FGC prays for judgment that:

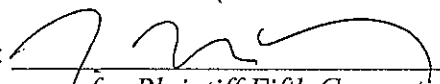
(a) IBM be found to have infringed the '540 Patent and '201 Patent;

- (b) IBM be found to have infringed and be infringing the '024 Patent;
- (c) The '540 Patent, '201 Patent, and '024 Patent be found valid and enforceable;
- (d) IBM and its officers, agents, servants and employees, privies, and all persons in active concert or participation with them be enjoined and restrained during the pendency of this action and permanently thereafter from further directly and/or indirectly infringing the '024 Patent;
- (e) IBM be required to pay FGC such damages as FGC has sustained, and will sustain, in consequence of IBM's direct and/or indirect infringement, including FGC's lost profits, but in no event less than a reasonable royalty, as provided by 35 U.S.C. § 284;
- (f) IBM's direct and/or indirect infringement of the '540 Patent, '201 Patent, and '024 Patent be found to have been willfully committed by IBM and that the damages be increased to three times the amount assessed, as provided by 35 U.S.C. § 284;
- (g) IBM be ordered to pay FGC pre-judgment interest on all sums as allowed by law;
- (h) IBM be ordered to pay FGC post-judgment interest on all sums as allowed by law;
- (i) That this be adjudged an exceptional case, and that IBM be ordered to pay FGC's attorney's fees and costs, as provided by 35 U.S.C. § 285 and other applicable laws;
and
- (j) That this Court award FGC such other and further relief as the Court may deem just, equitable, and appropriate.

DEMAND FOR JURY TRIAL

In accordance with Federal Rule of Civil Procedure 38(b), Plaintiff FGC demands a trial by jury on all issues triable by a jury.

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