

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

MASS ENGINEERED DESIGN, INC.,

Plaintiff,

v.

**DELL, INC., AND
DELL MARKETING L.P.,**

Defendants.

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Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, Mass Engineered Design, Inc. (hereinafter, “MASS” or “Plaintiff”), by and through its undersigned counsel, files this Original Complaint against Defendants, Dell, Inc. and Dell Marketing, L.P. (hereinafter, referred to collectively as “DELL” or “Defendants”), as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of Plaintiff’s United States Patent No. RE 36,978 entitled “Dual Display System” (hereinafter, the “‘978 Patent” or the “Patent-in-Suit”).

PARTIES

2. Plaintiff, Mass Engineered Design, Inc., is a limited liability company organized and existing under the laws of Ontario, Canada.

3. Upon information and belief, Defendant Dell, Inc. (“DI”), is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1 Dell Way, Round Rock, Texas 78682.

4. Upon information and belief, Defendant Dell Marketing, L.P. (“DMLP”), is a limited

partnership organized and existing under the laws of the State of Texas, with a place of business at 1 Dell Way, Round Rock, Texas 78682. Hereinafter, DI and DLMP are collectively referred to as “DELL” or “Defendants.”

JURISDICTION AND VENUE

5. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

6. The Court has personal jurisdiction over the Defendants, including because Defendants have minimum contacts within the State of Texas; Defendants have purposefully availed themselves of the privileges of conducting business in the State of Texas; Defendants have sought protection and benefit from the laws of the State of Texas; Defendants regularly conduct business within the State of Texas; and Plaintiff’s cause of action arises directly from Defendant’s business contacts and other activities in the State of Texas.

7. More specifically, Defendants, directly and/or through intermediaries, distribute, offer for sale, sell, advertise and/or use a multi-display monitor stand, namely the MDS14 Dual Monitor Stand multi-display system, that practices the claimed multi-display systems of the ‘978 Patent in the United States and in the State of Texas. Defendants have committed patent infringement in the State of Texas and/or have induced others to commit and/or have contributed to patent infringement in the State of Texas. Defendants solicit customers in the State of Texas. Defendants have paying customers who are residents of the State of Texas and who purchase and/or use the Defendants’ products and services in the State of Texas. Further, Defendants have an interactive website that is accessible from the State of Texas.

8. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b),

including because Defendants have purposefully availed themselves of the privileges of conducting business in the Eastern District of Texas; Defendants regularly conduct business within the Eastern District of Texas; and Plaintiff's cause of action arises directly from Defendants' business contacts and other activities in the Eastern District of Texas.

9. More specifically, Defendants, directly and/or through intermediaries, distribute, offer for sale, sell, advertise and/or use, a multi-display monitor stand, namely the MDS14 Dual Monitor Stand multi-display system, that practices the claimed multi-display systems of the '978 Patent in the Eastern District of Texas. Defendants have committed patent infringement in the Eastern District of Texas, and/or have induced others to commit and/or have contributed to patent infringement in the Eastern District of Texas. Defendants solicit customers in the Eastern District of Texas. Defendants have paying customers who are residents of the Eastern District of Texas and who purchase and/or use the Defendants' products and services in the Eastern District of Texas.

BACKGROUND

A. The *Ergotron* Case

10. On July 7, 2006, MASS and its President, Jerry Moscovitch, filed suit in this District against Dell, Inc. and others for infringement of the '978 Patent. *See Mass Engineered Design, Inc., et al. v. Ergotron, Inc., et al.*; Civil Action No. 2:06-cv-272 (the "*Ergotron* case"), Dkt. No.

1. MASS alleged, *inter alia*, that DI infringed MASS's '978 Patent.

11. On June 26, 2007, MASS amended its complaint in the *Ergotron* case to further allege, *inter alia*, infringement of its '978 Patent by DMLP. *Id.* at Dkt. No. 85.

12. As part of the *Ergotron* case, both MASS and DELL submitted briefing related to the construction of certain disputed terms in the '978 Patent. On March 13, 2008, the Court in the

Ergotron case construed certain terms of the ‘978 Patent. *Id.* at Dkt. No. 266. Subsequently, on May 30, 2008 and August 8, 2008, the Court further clarified the construction of certain terms in the ‘978 Patent. *Id.* at Dkt. Nos. 344 and 372.

13. In about November 2008, the *Ergotron* case, including MASS’s infringement claims against both DI and DMLP, proceeded to a seven-day jury trial. Ultimately, the jury found that DI and DMLP infringed MASS’s ‘978 Patent. *Id.* at Dkt. No. 660. The jury further found that DI’s and DMLP’s infringement was willful and that the ‘978 Patent was not invalid. *Id.*

14. Following the jury trial, the Court entered a Permanent Injunction against, *inter alia*, DI and DMLP, prohibiting them from “from making, using, selling, or offering to sell in the United States, and also from importing into the United States, the products that were adjudicated ... and any variant of those products that are not more than colorably different.” *Id.* at Dkt. No. 744.

B. Dell’s Prior And Current Infringing Products

15. As described above, DELL was found to infringe MASS’s ‘978 Patent through at least its sale of certain multi-display products. An example of one such product was the Ergotron DS-100 multi-display system:

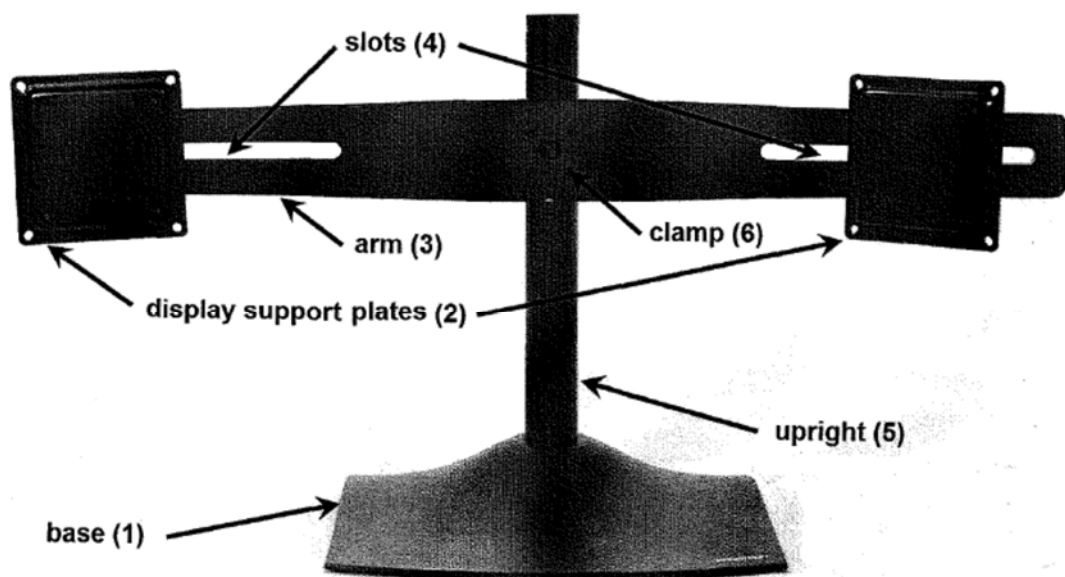
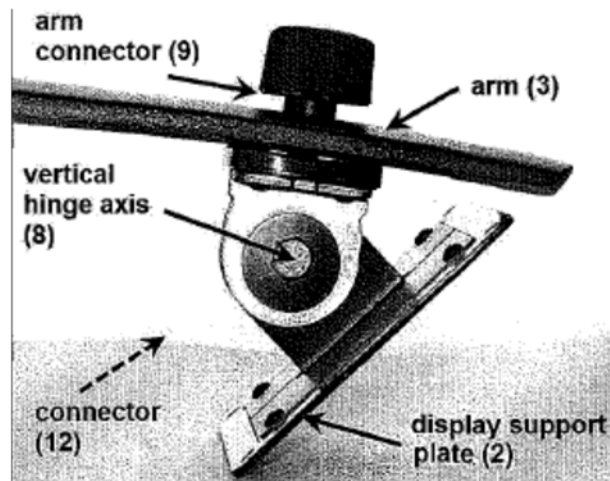


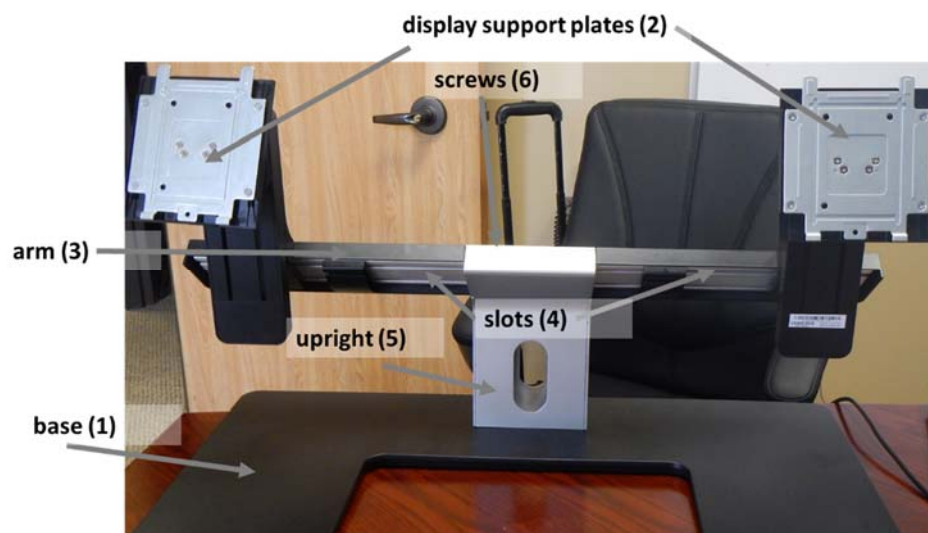
Figure 1 DS100 display system

16. The Ergotron DS-100 system comprised a base (1), upright (5), arm (3), and connectors (as noted above). The connectors (12) further comprised a hinge (8) and an arm connector (9):



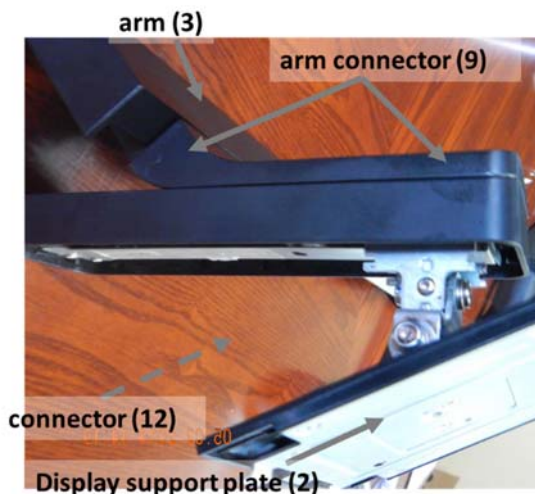
17. The connector of the DS-100 system allowed, *inter alia*, for adjusting the angular orientation of each of the displays relative to the arm assembly to thereby permit the displays to be angled toward each other to a desired degree.

18. DELL's MDS14 Dual Monitor Stand multi-display system is not more than colorably different from the infringing DS-100 multi-display system, and it infringes the '978 Patent for least the same reasons that the DS-100 multi-display system infringed.



19. The DELL MDS14 system comprises a base (1), upright (5), arm (3), and connectors (as

noted above). The connectors (12) further comprised a hinge (8) and an arm connector (9):



20. The connector of the MDS14 allows, *inter alia*, for adjusting the angular orientation of each of the displays relative to the arm assembly to thereby permit the displays to be angled toward each other to a desired degree.

21. In all relevant respects, DELL's MDS14 system comprises each of the components and/or functionality of the infringing Ergotron DS-100 system. DELL's MDS14 infringes MASS's '978 Patent in at least colorably the same way, if not the exact same way, that the Ergotron DS-100 infringed the '978 Patent.

COUNT I – PATENT INFRINGEMENT

22. MASS refers to and incorporates herein the allegations of Paragraphs 1-21 above.

23. United States Patent No. RE 36,978 entitled "Dual Display System" was duly and legally issued by the United States Patent and Trademark Office on December 5, 2000 after full and fair reissue examination. Additionally, the '978 Patent was subject to reexamination on March 4, 2010. A Reexamination Certificate issued on May 10, 2011, confirming the patentability of claims 1-8, 13, 16 and 17 (the remaining claims were not the subject of reexamination) and also adding new claims 18 – 38. Plaintiff is the exclusive licensee of all substantial rights in and to the '978 Patent

and possesses all rights of recovery under the '978 Patent including the right to sue for infringement and recover damages, including past damages.

24. On information and belief, Defendants make, use, sell, offer to sell, and import, without limitation, a multi-display monitor system, namely the MDS14 Dual Monitor Stand, comprising a base member (including as this Court has previously construed that term), at least a pair of electronic displays (including as this Court has previously construed that term), an arm assembly, support means (including as this Court has previously construed that term) and mounting means (including as this Court has previously construed that term). Plaintiff is informed and believes that Defendants infringe the '978 Patent by and through at least their manufacture, use, sale, offer to sell, and/or importation of the MDS14 Dual Monitor Stand.

25. Additionally, or in the alternative, upon information and belief, Plaintiff is informed and believes that Defendants have induced infringement of the '978 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by actions comprising intentionally inducing infringement of the '978 Patent in this judicial district, and elsewhere in the United States, including by aiding or abetting at least customers and other end users to use said system, apparatuses and methods. Upon information and belief, such induced infringement has occurred at least since each Defendants have made, used, sold, offered for sale and/or imported the MDS14 Dual Monitor Stand, and Defendants' inducement of infringement involves Defendants' knowledge that the induced acts constitute patent infringement.

26. Additionally, or in the alternative, upon information and belief, Plaintiff is informed and believes that Defendants have contributed to infringement of the '978 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by actions comprising contributing to at least the use of said systems and apparatuses by customers and/or other end users, and such

contributory infringement necessarily involves knowledge that such systems and apparatuses are especially made or especially adapted for use in an infringement of the '978 Patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

27. Each of Defendants' aforesaid activities has been without authority and/or license from Plaintiffs.

28. Further, Defendants' infringement is willful. Defendants have had knowledge of the '978 Patent since at least August 2001. Further, Defendants are subject to a permanent injunction prohibiting their sale of products that "not more than colorably different" from the infringing Ergotron DS-100 previously sold by Defendants. As illustrated above, Defendants' MDS14 Dual Monitor Stand is not more than colorably different from the infringing Ergotron DS-100 system.

29. Defendants' awareness of (a) the '978 Patent, including the validity of the patent as evidenced by Defendants' failure to invalidate the patent during the Ergotron case; (b) the infringement of the DS-100 system; and (c) the substantial similarity between the infringing DS-100 system and Defendants' MDS14 Dual Monitor Stand constitutes an objectively high likelihood that DELL's actions constituted infringement of a valid patent.

30. Further, Defendants knew of this objectively high risk of patent infringement at least because it was intimately involved in the *Ergotron* case. DELL knew that the '978 Patent was valid and DELL knew that the DS-100 system, which is substantially similar to DELL's MDS14 Dual Monitor Stand, infringed the '978 Patent.

31. Therefore, Defendants' infringement of the '978 Patent is willful.

32. Plaintiff is entitled to recover from the Defendants the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35

U.S.C. § 284.

33. Defendants' infringement of Plaintiff's exclusive rights under the '978 Patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

34. Defendants are barred, including by res judicata and estoppel, from challenging the validity of the '978 patent or from denying infringement on connection with the MDS14 Dual Monitor Stand.

JURY DEMAND

35. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

36. Plaintiff respectfully requests that the Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the '978 Patent has been directly and/or indirectly infringed, either literally and/or under the doctrine of equivalents, by Defendants;
- B. An award to Plaintiff of damages adequate to compensate Plaintiff for Defendants' acts of infringement together with pre-judgment and post-judgment interest;
- C. A grant of a further permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendants and all persons acting in concert therewith from further acts of infringement with respect to the claims of the Patent-in-Suit;
- D. That this Court declare that Defendants' infringement has been and continues to be willful, including that Defendants' acted to infringe the Patent-in-Suit despite an objectively high likelihood that their actions constituted infringement of a valid patent and, accordingly,

award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284.

E. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and

F. Any further relief that this Court deem just and proper.

May 5, 2014

Respectfully submitted,

/s/ John J. Edmonds

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