

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

AFLUO, LLC,

Plaintiff,

V.

**ADOBE SYSTEMS INC.; AKAMAI
TECHNOLOGIES, INC.; AND LEVEL 3
COMMUNICATIONS, LLC,**

Defendants.

Case No.

JURY TRIAL DEMANDED

[PROPOSED] SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Afluo, LLC (“Afluo”) by and through its undersigned attorneys, for its complaint against Defendants Adobe Systems Inc., Akamai Technologies, Inc., and Level 3 Communications, LLC (collectively “Defendants”), hereby alleges the following:

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. Afluo is a limited liability company organized and existing under the laws of Delaware with its principal place of business located in Wilmington, Delaware.

3. Defendant Adobe Systems Inc. (“Adobe”) is a corporation organized and existing under the laws of Delaware with its headquarters in San Jose, California. Adobe transacts substantial business, either directly or through its agents, on an ongoing basis in this judicial district and elsewhere in the United States.

4. Defendant Akamai Technologies, Inc. (“Akamai”) is a corporation organized and existing under the laws of Delaware with its principal place of business in Cambridge, Massachusetts. Akamai transacts substantial business, either directly or through its agents, on an ongoing basis in this judicial district and elsewhere in the United States.

5. Defendant Level 3 Communications, LLC (“Level 3”) is a corporation organized and existing under the laws of Delaware with its principal place of business in Broomfield, Colorado. Level 3 transacts substantial business, either directly or through its agents, on an ongoing basis in this judicial district and elsewhere in the United States. Level 3 has represented that Level 3 Communications, LLC is the properly named defendant to this action, and Afluo has relied on this representation.

6. Unless specifically stated otherwise, the acts complained of herein were committed by, on behalf of, or for the benefit of Adobe, Akamai, and Level 3.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Defendants because Defendants have committed acts of infringement in violation of 35 U.S.C. § 271 and have placed infringing products into the stream of commerce, through an established distribution channel, with the knowledge and/or understanding that such products are used and sold in this District. These acts cause injury to Afluo within the District. Defendants derive substantial revenue from the sale of infringing products distributed within the District, expect or should reasonably expect their actions to have consequences within the District, and derive substantial revenue from interstate and international commerce. Because Defendants are incorporated in Delaware, this Court has personal jurisdiction over Defendants.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT 1 - INFRINGEMENT OF U.S. PATENT NO. 5,995,091

10. On November 30, 1999, the United States Patent and Trademark Office issued United States Patent No. 5,995,091 (“the ‘091 Patent”) for an invention entitled “System and

method for streaming multimedia data.” Afluo is the owner of the ‘091 Patent and holds all rights and interests in the ‘091 Patent. A true and correct copy of the ‘091 Patent is attached as Exhibit A.

11. Adobe has directly infringed and continues to directly infringe one or more claims of the ‘091 Patent by its making, manufacture, use, sale, importation, or offer for sale of multimedia streaming products, including but not limited to the Adobe Flash Media Server products (“FMS Products”), such as Flash Media Server, Flash Media Streaming Server, and Flash Media Player. Adobe is liable for its direct infringement of the ‘091 Patent pursuant to 35 U.S.C. § 271.

12. Adobe actively, knowingly, and intentionally induced and continues to actively, knowingly, and intentionally induce infringement of one or more claims of the ‘091 Patent by its making, manufacture, use, sale, importation, or offer for sale of multimedia streaming products, including but not limited to FMS Products, as well as by contracting with others to use, market, sell, offer to sell, or import FMS Products.

13. At all times during its active, knowing, and intentional inducement, Adobe acted with knowledge of the ‘091 Patent and its claims; with knowledge that its customers and end users would use, market, sell, offer to sell, and import FMS Products; and with the knowledge and the specific intent to encourage, direct, and facilitate those infringing sales and uses of FMS Products through the creation and dissemination of promotional and marketing materials, instructional materials, product materials, and technical materials.

14. Adobe has also contributed to the infringement by others, including the end users of FMS Products, and continues to contribute to others’ infringement by selling, offering to sell, and importing FMS Products into the United States, knowing that those products constitute a material part of the inventions of the ‘091 Patent, knowing those products to be especially made

or adapted to infringe the '091 Patent, and knowing that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

15. Adobe has had knowledge and notice of the '091 Patent and its infringement since at least, and through, the filing and service of the Complaint and despite this knowledge continues to commit tortious conduct by way of patent infringement.

16. Akamai has directly infringed and continues to directly infringe one or more claims of the '091 Patent by its making, manufacture, use, sale, importation, or offer for sale of multimedia streaming products, including but not limited to FMS Products and Akamai HD for the Adobe Flash Platform, HTTP Dynamic Streaming for Live and On Demand Video, Akamai HD for iPhone and iPad, and Live and On Demand Streaming (collectively "Akamai's Products"). Akamai is liable for its direct infringement of the '091 Patent pursuant to 35 U.S.C. § 271.

17. Akamai actively, knowingly, and intentionally induced and continues to actively, knowingly, and intentionally induce infringement of one or more claims of the '091 Patent by its making, manufacture, use, sale, importation, or offer for sale of multimedia streaming products, including but not limited to FMS Products and Akamai's Products, as well as by contracting with others to use, market, sell, offer to sell, or import FMS Products and Akamai's Products.

18. At all times during its active, knowing, and intentional inducement, Akamai acted with knowledge of the '091 Patent and its claims; with knowledge that its customers and end users would use, market, sell, offer to sell, and import FMS Products and Akamai's Products; and with the knowledge and the specific intent to encourage, direct, and facilitate those infringing sales and uses of FMS Products and Akamai's Products through the creation and dissemination of promotional and marketing materials, instructional materials, product materials, and technical materials.

19. Akamai has also contributed to the infringement by others, including the end users of FMS Products and Akamai's Products, and continues to contribute to others' infringement by selling, offering to sell, and importing FMS Products and Akamai's Products into the United States, knowing that those products constitute a material part of the inventions of the '091 Patent, knowing those products to be especially made or adapted to infringe the '091 Patent, and knowing that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

20. Akamai has had knowledge and notice of the '091 Patent and its infringement since at least, and through, the filing and service of the Complaint and despite this knowledge continues to commit tortious conduct by way of patent infringement.

21. Level 3 has directly infringed and continues to directly infringe one or more claims of the '091 Patent by its making, manufacture, use, sale, importation, or offer for sale of multimedia streaming products, including but not limited to FMS Products and Level 3 Next-Generation Streaming Solutions for Adobe Flash Media Server, Level 3 HTTP Streaming Platform for Adobe Flash Media Server, Level 3 HTTP Delivery Technology for Adobe Flash Media Server, Level 3 Media Player for Adobe Flash, Level 3 Flash Video Streaming, and Level 3 Content Delivery Network for Adobe Flash (collectively "Level 3's Products"). Level 3 is liable for its direct infringement of the '091 Patent pursuant to 35 U.S.C. § 271.

22. Level 3 actively, knowingly, and intentionally induced and continues to actively, knowingly, and intentionally induce infringement of one or more claims of the '091 Patent by its making, manufacture, use, sale, importation, or offer for sale of multimedia streaming products, including but not limited to FMS Products and Level 3's Products, as well as by contracting with others to use, market, sell, offer to sell, or import FMS Products and Level 3's Products.

23. At all times during its active, knowing, and intentional inducement, Level 3 acted

with knowledge of the '091 Patent and its claims; with knowledge that its customers and end users would use, market, sell, offer to sell, and import FMS Products and Level 3's Products; and with the knowledge and the specific intent to encourage, direct, and facilitate those infringing sales and uses of FMS Products and Level 3's Products through the creation and dissemination of promotional and marketing materials, instructional materials, product materials, and technical materials.

24. Level 3 has also contributed to the infringement by others, including the end users of FMS Products and Level 3's Products, and continues to contribute to others' infringement by selling, offering to sell, and importing FMS Products and Level 3's Products into the United States, knowing that those products constitute a material part of the inventions of the '091 Patent, knowing those products to be especially made or adapted to infringe the '091 Patent, and knowing that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

25. Level 3 has had knowledge and notice of the '091 Patent and its infringement since at least, and through, the filing and service of the Complaint and despite this knowledge continues to commit tortious conduct by way of patent infringement.

26. Defendants' acts of direct and indirect infringement have damaged Afluo, and Afluo is entitled to recover from Defendants the damages it has sustained as a result of Defendants' wrongful acts in an amount subject to proof at trial. Defendants' direct and indirect infringement of Afluo's rights under the '091 Patent will continue to damage Afluo, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

JURY DEMAND

27. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Afluo respectfully requests a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Afluo requests entry of judgment in its favor and against Adobe, Akamai, and Level 3 as follows:

- a. Declaring that Defendants have infringed the '091 Patent;
- b. Awarding compensatory damages arising out of Defendants' infringement of the '091 Patent to Afluo, together with prejudgment and post-judgment interest, in an amount according to proof;
- c. Permanently enjoining Defendants and their respective officers, agents, employees, and those acting in privity with them from further infringement, including contributory infringement or inducing infringement, of the '091 Patent; and
- d. Awarding such other costs, attorney fees, and further relief as the Court may deem just and proper.

DATED: June __, 2013

Respectfully submitted,

FARNAN LLP

By: /s/ Brian F. Farnan

Brian F. Farnan (No. 4089)
919 North Market Street, 12th Floor
Wilmington, DE 19801
Telephone: (302) 777-0336
Facsimile: (302) 777-0301
bfarnan@farnanlaw.com

Max L. Tribble (admitted *pro hac vice*)
Brian D. Melton (admitted *pro hac vice*)
Chanler A. Langham (admitted *pro hac vice*)
Audrey M. Calkins (admitted *pro hac vice*)
Jeff Chi (admitted *pro hac vice*)
SUSMAN GODFREY L.L.P.
1000 Louisiana, Suite 5100

Houston, TX 77002-5096
Telephone: (713) 653-7820
Facsimile: (713) 654-6666
mtribble@susmangodfrey.com
bmelton@susmangodfrey.com
clangham@susmangodfrey.com
acalkins@susmangodfrey.com
jchi@susmangodfrey.com

Attorneys for Plaintiff
Afluo, LLC