

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

INTELLECTUAL VENTURES I LLC and
INTELLECTUAL VENTURES II LLC,

Plaintiffs,

v.

SYMANTEC CORP. and VERITAS
TECHNOLOGIES LLC,

Defendants.

Civil Action No. 13-cv-440-LPS

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Intellectual Ventures I LLC (“Intellectual Ventures I”) and Intellectual Ventures II LLC (“Intellectual Ventures II”), by their undersigned attorneys, hereby allege as follows:

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. Intellectual Ventures I is a corporation organized and existing under the laws of Delaware, with its principal place of business located in Bellevue, Washington.
3. Intellectual Ventures II is a corporation organized and existing under the laws of Delaware, with its principal place of business located in Bellevue, Washington.
4. Defendant Symantec Corporation (“Symantec”) is a corporation organized and existing under the laws of Delaware, with a principal place of business in Mountain View, California. Symantec transacts substantial business, either directly or through its agents, on an ongoing basis in this judicial district and elsewhere in the United States.

5. Veritas Technologies LLC (“Veritas Technologies”) is a Limited Liability Company organized and existing under the laws of Delaware, with a principal place of business in Mountain View, California. Veritas Technologies transacts substantial business, either directly or through its agents, on an ongoing basis in this judicial district and elsewhere in the United States.

6. Unless specifically stated otherwise, the acts complained of herein were committed by, on behalf of, and/or for the benefit of Symantec and Veritas Technologies.

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 Symantec because Symantec is incorporated in the State of Delaware.

9. This Court has personal jurisdiction over Veritas Technologies because Veritas Technologies is organized under the laws of the State of Delaware. This Court also has personal jurisdiction over Veritas Technologies as a transferee in interest of Symantec.

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

COUNT 1 – INFRINGEMENT OF U.S. PATENT NO. 5,537,533

11. On July 16, 1996, United States Patent No. 5,537,533 (“the ’533 patent”) was duly and legally issued for an invention entitled “System and method for remote mirroring of digital data from a primary network server to a remote network server.” Intellectual Ventures II is the owner of the ’533 patent and holds all rights and interests in the ’533 patent. A true and correct copy of the ’533 patent is attached hereto as Exhibit A.

12. Symantec and its transferee in interest Veritas Technologies have infringed and continue to infringe one or more claims of the ’533 patent by their manufacture, use, sale,

importation, and/or offer for sale of certain storage software products, including but not limited to Symantec's Replicator and Veritas Volume Replicator products and Veritas Technologies' InfoScale products. Symantec and its transferee in interest Veritas Technologies are liable for their infringement of the '533 patent pursuant to 35 U.S.C. § 271.

13. Symantec and its transferee in interest Veritas Technologies actively, knowingly, and intentionally have induced, and continue to actively, knowingly, and intentionally induce, infringement of the '533 patent by making, using, offering for sale, importing, and selling certain storage software products, including but not limited to Symantec's Replicator and Veritas Volume Replicator products and Veritas Technologies' InfoScale products, as well as by contracting with others to use, market, sell, offer to sell, and import such products, all with knowledge of the '533 patent and its claims; with knowledge that their customers and end users will use, market, sell, offer to sell, and import such products; and with the knowledge and the specific intent to encourage and facilitate those infringing sales and uses of such products through the creation and dissemination of promotional and marketing materials, instructional materials, product manuals, and technical materials.

14. Symantec and its transferee in interest Veritas Technologies have also contributed to the infringement by others, including the end users of certain storage software products, including but not limited to Symantec's Replicator and Veritas Volume Replicator products and Veritas Technologies' InfoScale products, and continue to contribute to infringement by others, by selling, offering to sell, and importing such products into the United States, knowing that those products constitute a material part of the inventions of the '533 patent, knowing those products to be especially made or adapted to infringe the '533 patent, and knowing that those

products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

15. Symantec and its transferee in interest Veritas Technologies have had knowledge of and notice of the '533 patent and their infringement since at least, and through, the filing and service of the Complaint and despite this knowledge continue to commit the aforementioned infringing acts. In addition, Symantec and its transferee in interest Veritas Technologies have had knowledge of the '533 patent at least since December 3, 2009, when Symantec referenced the '533 patent in an information disclosure statement during the prosecution of Symantec's U.S. Patent No. 7,664,983, App. No. 11/215,958.

16. Symantec's acts of infringement and the acts of infringement of Symantec's transferee in interest Veritas Technologies have caused damage to Intellectual Ventures II, and Intellectual Ventures II is entitled to recover from Symantec and its transferee in interest Veritas Technologies the damages it has sustained as a result of Symantec's wrongful acts and the wrongful acts of Symantec's transferee in interest Veritas Technologies in an amount subject to proof at trial. Symantec's infringement and the infringement of Symantec's transferee in interest Veritas Technologies of Intellectual Ventures II's exclusive rights under the '533 patent will continue to damage Intellectual Ventures II, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

17. Upon information and belief, Symantec's infringement and the infringement of Symantec's transferee in interest Veritas Technologies of the '533 patent is willful and deliberate, entitling Intellectual Ventures II to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Some of Symantec's own patents, such as U.S. Patent Nos. 6,144,992 and 7,664,983, indicate Symantec

had actual knowledge of the '533 patent before this suit was filed. Nevertheless, Symantec and its transferee in interest Veritas Technologies have infringed and continue to infringe the '533 patent despite an objectively high likelihood that their actions constitute infringement.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 6,598,131

18. On July 22, 2003, United States Patent No. 6,598,131 (“the '131 patent”) was duly and legally issued for an invention entitled “Data image management via emulation of non-volatile storage device.” Intellectual Ventures II is the owner of the '131 patent and holds all rights and interests in the '131 patent. A true and correct copy of the '131 patent is attached hereto as Exhibit B.

19. Symantec and its transferee in interest Veritas Technologies have infringed and continue to infringe one or more claims of the '131 patent by their manufacture, use, sale, importation, and/or offer for sale of certain storage software products, including but not limited to Symantec’s Replicator and Veritas Volume Replicator products and Veritas Technologies’ InfoScale products. Symantec and its transferee in interest Veritas Technologies are liable for their infringement of the '131 patent pursuant to 35 U.S.C. § 271.

20. Symantec and its transferee in interest Veritas Technologies actively, knowingly, and intentionally have induced, and continue to actively, knowingly, and intentionally induce, infringement of the '131 patent by making, using, offering for sale, importing, and selling certain storage software products, including but not limited to Symantec’s Replicator and Veritas Volume Replicator products and Veritas Technologies’ InfoScale products, as well as by contracting with others to use, market, sell, offer to sell, and import such products, all with knowledge of the '131 patent and its claims; with knowledge that their customers and end users will use, market, sell, offer to sell, and import such products; and with the knowledge and the specific intent to encourage and facilitate those infringing sales and uses of such products

through the creation and dissemination of promotional and marketing materials, instructional materials, product manuals, and technical materials.

21. Symantec and its transferee in interest Veritas Technologies have also contributed to the infringement by others, including the end users of certain storage software products, including but not limited to Symantec's Replicator and Veritas Volume Replicator products and Veritas Technologies' InfoScale products, and continue to contribute to infringement by others, by selling, offering to sell, and importing such products into the United States, knowing that those products constitute a material part of the inventions of the '131 patent, knowing those products to be especially made or adapted to infringe the '131 patent, and knowing that those products are not staple articles or commodities of commerce suitable for substantial non-infringing use.

22. Symantec and its transferee in interest Veritas Technologies have had knowledge of and notice of the '131 patent and their infringement since at least, and through, the filing and service of the Complaint and despite this knowledge continue to commit the aforementioned infringing acts. In addition, Symantec and its transferee in interest Veritas Technologies have had knowledge of the '131 patent at least since September 30, 2005, when Symantec first referenced the '131 patent in an information disclosure statement during the prosecution of Symantec's U.S. Patent No. 7,673,130, App. No. 11/239,922; May 15, 2007, when Symantec first referenced the '131 patent in an information disclosure statement during the prosecution of Symantec's U.S. Patent No. 7,702,892, App. No. 11/243,129; and March 6, 2008, when Symantec first referenced the '131 patent in an information disclosure statement during the prosecution of Symantec's U.S. Patent No. 7,496,920, App. No. 11/767,666.

23. Symantec's acts of infringement and the acts of infringement of Symantec's transferee in interest Veritas Technologies have caused damage to Intellectual Ventures II, and Intellectual Ventures II is entitled to recover from Symantec and its transferee in interest Veritas Technologies the damages it has sustained as a result of Symantec's wrongful acts and the wrongful acts of Symantec's transferee in interest Veritas Technologies in an amount subject to proof at trial. Symantec's infringement and the infringement of Symantec's transferee in interest Veritas Technologies of Intellectual Ventures II's exclusive rights under the '131 patent will continue to damage Intellectual Ventures II, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

24. Upon information and belief, Symantec's infringement and the infringement of Symantec's transferee in interest Veritas Technologies of the '131 patent is willful and deliberate, entitling Intellectual Ventures II to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285. Many of Symantec's own patents, such as U.S. Patent Nos. 6,986,033, 7,058,797, 7,069,428, 7,222,229, 7,496,920, 7,506,151, 7,577,806, 7,577,807, 7,584,337, 7,631,120, 7,673,130, 7,702,892, 7,725,667, 7,725,760, 7,730,222, 7,792,125, 7,827,362, 7,836,292, 7,895,424, 7,904,428, 7,991,748, 8,037,289, 8,051,028, and 8,095,488, indicate Symantec had actual knowledge of the '131 patent before this suit was filed. Nevertheless, Symantec and its transferee in interest Veritas Technologies have infringed and continue to infringe the '131 patent despite an objectively high likelihood that their actions constitute infringement.

JURY DEMAND

25. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Intellectual Ventures I and Intellectual Ventures II respectfully request a trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Intellectual Ventures I and Intellectual Ventures II request entry of judgment in their favor and against Symantec and its transferee in interest Veritas Technologies as follows:

a. Declaring that Symantec and its transferee in interest Veritas Technologies have infringed U.S. Patent Nos. 5,537,533 and 6,598,131;

b. Awarding the damages arising out of Symantec's infringement and the infringement of Symantec's transferee in interest Veritas Technologies of U.S. Patent Nos. 5,537,533, and 6,598,131, including enhanced damages pursuant to 35 U.S.C. § 284, to Intellectual Ventures I and Intellectual Ventures II, together with prejudgment and post-judgment interest, in an amount according to proof;

c. Permanently enjoining Symantec and its transferee in interest Veritas Technologies and their officers, agents, employees, and those acting in privity with them, from further infringement, including contributory infringement and/or inducing infringement, of U.S. Patent Nos. 5,537,533 and 6,598,131;

d. Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and

e. Awarding such other costs and further relief as the Court may deem just and proper.

DATED: June 13, 2016

Respectfully submitted,

By: /s/ Brian Farnan

Joseph J. Farnan III (Bar No. 3945)
Brian E. Farnan (Bar No. 4089)
bfarnan@farnanlaw.com
FARNAN LLP
919 North Market Street, 12th Floor

Wilmington, Delaware 19801
Telephone: (302) 777-0300
Facsimile: (302) 777-0301

Parker C. Folse III (admitted *pro hac vice*)
Email: pfolse@susmangodfrey.com
Brooke A.M. Taylor (admitted *pro hac vice*)
Email: btaylor@susmangodfrey.com
Daniel J. Shih (admitted *pro hac vice*)
Email: dshih@susmangodfrey.com
Jordan Talge (admitted *pro hac vice*)
Email: jtalge@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1201 Third Avenue, Suite 3800
Seattle, WA 98101-3000
Telephone: (206) 516-3880
Facsimile: (206) 516-3883

Richard W. Hess (*Pro Hac Vice*)
Email: rhess@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, TX 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-3386

Ian M. Gore (admitted *pro hac vice*)
Email: igore@susmangodfrey.com
SUSMAN GODFREY L.L.P.
560 Lexington Avenue, 15th Floor
New York, NY 10022-6828
Telephone: (212) 336-8330
Facsimile: (212) 336-8340

**ATTORNEYS FOR PLAINTIFF
INTELLECTUAL VENTURES I LLC and
INTELLECTUAL VENTURES II LLC**