

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

SOFTEX, Inc.,

Plaintiff,

vs.

DELL TECHNOLOGIES INC. and DELL
INC.,

Defendants.

Case No. 1:22-cv-01311

**PLAINTIFF'S FIRST RULE 30(b)(6)
DEPOSITION NOTICE TO DEFENDANTS**

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 30(b)(6), Plaintiff Softex, Inc. ("Softex") will take the deposition upon oral examination of Defendants Dell Technologies Inc. and Dell Inc. ("Dell" or "Defendant") via remote video conference on October 6, 2023. The deposition will be recorded by stenographic means and may also be recorded by videotape. The deposition will be conducted before an officer authorized to administer oaths and will continue from day-to-day, weekends and legal holidays excluded, until completed, or according to a schedule mutually agreed upon by the parties in advance of the appearance date. You are invited to attend and cross examine.

Pursuant to Federal Rule of Civil Procedure Rule 30(b)(6), Dell shall designate one or more officers, directors, managing agents, or other persons to testify on its behalf concerning the matters set forth in Exhibit "A." Dell is requested to set forth, for each person designated, the

topics on which the person will testify no less than five days before the commencement of the deposition.

Dated: September 15, 2023

/s/ Blair Jacobs

Blair Jacobs

bjacobs@McKoolSmith.com

Christina A. Ondrick

condrick@McKoolSmith.com

John Holley

jholley@McKoolSmith.com

MCKOOL SMITH, P.C.

1999 K Street, NW Suite 600

Washington, D.C. 20006

Telephone: (202) 370-8300

Telecopier: (202) 370-8344

Casey L. Shomaker

Texas State Bar No. 24110359

cshomaker@McKoolSmith.com

Matthew Folks

Texas State Bar No. 24116368

mfolks@McKoolSmith.com

MCKOOL SMITH, P.C.

300 Crescent Court, Suite 1500

Dallas, TX 75201

Telephone: (214) 978-4218

Telecopier: (214) 978-4044

***ATTORNEYS FOR PLAINTIFF
SOFTEX, INC.***

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Document has been served on all counsel of record via email on September 15, 2023.

/s/ Blair Jacobs
Blair Jacobs

EXHIBIT A

Notwithstanding any definition set forth below, each word, term, or phrase used in this Notice of Deposition is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

DEFINITIONS

1. “Absolute” means Absolute Software Corp. and Absolute Software, Inc., individually and collectively, including without limitation its subsidiaries, divisions, affiliates, predecessors, and any past or present directors, officers, agents, affiliates, representatives, employees, consultants, attorneys, entities acting in a joint-venture or partnership relationships with Absolute, and all other persons acting or purporting to act on behalf of Absolute.

2. “Absolute Functionality” means Absolute’s persistent theft detection software. This includes, but is not limited to, Absolute Home & Office, Absolute Computrace Persistence, Absolute LoJack, LoJack for Laptops, Absolute Visibility, Absolute Control, Absolute Resilience, and Computrace software. Absolute Functionality further includes any Absolute software identified in the Complaint against You, any amendments thereto, the Infringement Contentions against You, and any supplements or amendments thereto.

3. “Accused Features” means the functionality identified and discussed in Softex’s Complaint against You, and/or Infringement Contentions against You, Including any supplements or amendments thereto.

4. “Accused Instrumentality(ies)” means the products identified and discussed in Softex’s Complaint against You, and/or Infringement Contentions against You Including one or more Accused Features, Including any supplements or amendments thereto. Accused Instrumentalities include, but are not limited to, the following:

a. As to Absolute, the Accused Instrumentalities include (“Absolute Accused Instrumentality(ies)”):

- i. the Absolute software, products, instrumentalities, and services identified in the Absolute Complaint, any amendments thereto, the Absolute Infringement Contentions, and any supplement or amendment thereto;
- ii. each version, model, or variation of such software, products, instrumentalities, and services;
- iii. computers, desktops, workstations, laptops, notebooks, tablets, or other devices used by Absolute receiving, incorporating, using, or capable of receiving, incorporating, or using Absolute Functionality;
- iv. any computer, desktop, workstation, laptop, notebook, tablet, or other device incorporating receiving, incorporating, using, or capable of receiving, incorporating, or using any products, instrumentalities, and services identified in (i) or (ii) and further includes any products identified by Absolute in response to Individual Interrogatory No. 2 to Absolute; and
- v. all products Identified in Absolute’s response to Individual Interrogatory No. 1 to Absolute.

b. As to Dell, the Accused Instrumentalities include (“Dell Accused Instrumentality(ies)”):

- i. the Dell computers, desktops, workstations, laptops, notebooks, tablets, internet of things devices, or other devices identified in the Dell Complaint, any amendments thereto, the Dell Infringement Contentions, and any supplement or amendment thereto;

- ii. each version, model, or variation of such products, instrumentalities, and services;
 - iii. and each product made, used, sold, imported, offered for sale, and/or in development in the United States by Dell receiving, incorporating, using, or capable of receiving, incorporating, or using Absolute Functionality or Microsoft Functionality; and
 - iv. all products Identified in Dell's response to Individual Interrogatory No. 1 to Dell.
- c. As to HP, the Accused Instrumentalities include ("HP Accused Instrumentality(ies)"):
- i. the HP computers, desktops, workstations, laptops, notebooks, tablets, internet of things devices, or other devices identified in the HP Complaint, any amendments thereto, the HP Infringement Contentions, and any supplement or amendment thereto;
 - ii. each version, model, or variation of such products, instrumentalities, and services;
 - iii. and each product made, used, sold, imported, offered for sale, and/or in development in the United States by HP receiving, incorporating, using, or capable of receiving, incorporating, or using Absolute Functionality or Microsoft Functionality; and
 - iv. all products Identified in HP's response to Individual Interrogatory No. 1 to HP.
5. "Action" or "this litigation" refers to the above-captioned action.

6. “And,” “as well as,” and “or” have both conjunctive and disjunctive meanings as necessary to bring within the scope of each request all documents and information that might otherwise be construed to be outside its scope.

7. “Asserted Patents” means U.S. Patent Nos. 7,590,837 (“the ’837 Patent”), 8,516,235 (“the ’235 Patent”), 8,145,892 (“the ’892 Patent”), 8,287,603 (“the ’603 Patent”), 8,506,649 (“the ’649 Patent”), 8,137,410 (“the ’410 Patent”), and 8,128,710 (“the ’710 Patent”).

8. “Communication” or “Communications” means any written, verbal, or other transmission of fact, information, ideas or opinion, including, but not limited to, any utterance, notation, question, command, interjection, expression, gesture, suggestive conduct or statement of any nature whatsoever, any conversation (whether by telephone or otherwise), and any meeting and also including, but not limited to, correspondence, financial records, corporate records, reports, and Documents.

9. “Complaint” means the Complaints filed in these cases and any amendments or updates thereto.

10. “Concerning” or “Relating to” means referring to, concerning, mentioning, reflecting, summarizing, evidencing, involving, describing, discussing, showing, pertaining to, responding to, supporting, contradicting, constituting, consisting, containing, comprising, composing, embodying, or commenting on, in whole or in part.

11. “Dell” means Dell Technologies Inc. and Dell Inc., individually and collectively, including without limitation its subsidiaries, divisions, affiliates, predecessors, and any past or present directors, officers, agents, affiliates, representatives, employees, consultants, attorneys, entities acting in a joint-venture or partnership relationships with Dell, and all other persons acting or purporting to act on behalf of Dell.

12. “Describe” when used in relation to an act, event, instance, occasion, transaction, conversation, or communication means: (i) to state the date and place thereof; (ii) to identify the individual participants; (iii) to summarize separately for each individual participant what was said or done; and (iv) to identify each Document used or prepared in connection therewith or making any reference thereto.

13. “Document” or “Documents” are used herein in their broadest sense as set forth in the Federal Rules of Civil Procedure. These words mean and include all written, printed, typed, recorded, or graphic matter of every kind and description, both originals and copies, and all attachments and appendices, within Your possession, custody, or control. Without limiting the foregoing, the terms “Document” and “Documents” shall include all agreements, contracts, communications, correspondence, facsimile, letters, opinion letters, telegrams, telefaxes, messages, memoranda, records, reports, books, summaries or other records of telephone conversations or interviews, summaries or other records of personal conversations or interviews, minutes, summaries, other records of meetings and conferences, statements obtained from witnesses, summaries or other records of negotiations, other summaries, diaries, diary entries, calendars, appointment books, time records, instructions, work assignments, forecasts, progress reports, statistical data, statistical statements, financial statements, work sheets, work papers, drafts, graphs, charts, tables, accounts, analytical records, consultants’ and experts’ reports, appraisals, bulletins, notes, notices, marginal notations, notebooks, telephone records, bills, statements, records of obligation and expenditure, invoices, lists, journals, printouts, compilations, tabulations, analyses, studies, surveys, expense reports, microfilm, microfiche, tape or disc recordings, sound recordings, video recordings, film, tape, photographs, programs, electronic mail (“e-mail”) and data compilations from which information can be obtained (including matter used

in data processing), and other printed, written, handwritten, typewritten, recorded, stenographic, computer-generated, computer-stored, or electronically stored matter, however and by whomever produced, prepared, reproduced, disseminated, or made. The words “Document” and “Documents” also include all copies of Documents by whatever means made, except that where a Document is produced, identical copies of it that do not contain any markings, additions, or deletions that are different from the original do not have to be separately produced.

14. “Each,” “any,” and “all” mean each and every.

15. “Entity” means all types and kinds of business or other entities, including, but not limited to, corporations, partnerships, joint ventures, associations, and sole proprietorships.

16. “Foreign Counterpart” refers to any and all non-U.S. patents or patent applications corresponding to, claiming priority from, referring to the subject matter of, or directed to the inventions claimed in the Asserted Patents, any Related Patent, or any Related Application, regardless of whether such application is now abandoned.

17. “HP” means HP Inc., including without limitation its subsidiaries, divisions, affiliates, predecessors, and any past or present directors, officers, agents, affiliates, representatives, employees, consultants, attorneys, entities acting in a joint-venture or partnership relationships with HP, and all other persons acting or purporting to act on behalf of HP.

18. “Identification,” “Identify,” “Identity,” or “Identifying” when used in reference to:

(a) a natural person, means: to state, to the extent known, (1) the person’s full name or title, last known address, e-mail address, and telephone number; (2) the person’s present employer(s) and place(s) of employment; and (3) the person’s job title or position held.

(b) an entity, other than a natural person, means: to state, to the extent known, (1) the name or title of the entity; (2) the type of entity; and (3) the present or last known address and telephone number of its business and/or organizational offices.

(c) a Document, means: to identify the Document by (1) its date, author, and addressee(s); (2) state the type of Document (e.g., letter, memorandum, etc.); (3) identify its present location and identity of its custodian; and (4) identify the Document by its Bates number range.

(d) a statement, either written or spoken, means: (1) the substance of each such statement; (2) the exact words used by each person participating in the statement; (3) to identify each person engaging in the statement; (4) the identity of each person present at the making or reception of such statement; (5) the time and place of the statement; (6) the means of such statement (e.g., written, telephone, face-to-face, etc.).

19. “Including” means including, but not limited to.

20. “Infringe” and “Infringement” should be understood to include direct infringement, inducement of infringement, literal infringement, and infringement by the doctrine of equivalents.

21. “Microsoft Functionality” means each and every software version, product, instrumentality, and service that include any Windows’ “Find My” Functionality or software from Microsoft Corporation Identified in Plaintiff’s Complaints against You, any subsequent supplements or amendments thereto, Plaintiff’s Infringement Contentions against You, and any subsequent supplements or amendments thereto, and any future Microsoft Corporation instrumentality that is added to this case.

22. “Parties” means the terms “Plaintiff” and “Defendants” as defined herein.

23. “Person” means all natural persons, male or female, and all types and kinds of business or other entities, including, but not limited to, corporations, partnerships, joint ventures, associations, and sole proprietorships and any reference to an individual person, either singularly or as part of a defined group, including that person’s employees, agents, legal representatives, non-legal representatives, personal representatives, attorneys, heirs, successors, assigns, and any other person or entity acting on the behalf of such individual person.

24. “Phoenix” means Phoenix Technologies Ltd., including without limitation their subsidiaries, divisions, affiliates, predecessors, and any past or present directors, officers, agents, affiliates, representatives, employees, consultants, attorneys, entities acting in a joint-venture or partnership relationships with Phoenix, and all other persons acting or purporting to act on behalf of Phoenix.

25. “Regarding,” “Relate(s) to” or “relating to” mean constituting, defining, concerning, embodying, reflecting, identifying, stating, referring to, bearing upon, dealing with or in any way pertaining to.

26. “Related Applications” means any and all applications relating to the Asserted Patents, including any continuations, continuations-in-part, divisionals, interferences, reexaminations, reissues, parents, Foreign Counterpart applications, and any other applications disclosing, describing, or claiming any invention disclosed, described, or claimed in the Asserted Patents, or claiming the benefit of the filing date of any application whose benefit is claimed in the Asserted Patents, whether or not abandoned and whether or not issued.

27. “Related Patent” means any patent application or issued patent filed or issued in any country or region (such as with the European Patent Office), including but not limited to foreign counterparts, continuations, continuations in part, divisionals, reexaminations, reissues,

provisionals, parent applications or patents, child applications or patents, PCT applications, patents incorporated by reference, and any other applications disclosing, describing or claiming any invention disclosed, described or claimed in the Asserted Patents, or claiming the benefit of the filing date or any application whose benefit is claimed in the Asserted Patents, whether or not abandoned and whether or not issued.

28. “Softex” means Softex LLC (“Plaintiff”) or Softex, Inc., individually and collectively, including without limitation its subsidiaries, divisions, affiliates, predecessors, and any past or present directors, officers, agents, affiliates, representatives, employees, consultants, attorneys, entities acting in a joint-venture or partnership relationships with Softex, and all other persons acting or purporting to act on behalf of Softex.

29. “Third Party” means any natural person, corporation, partnership, association, joint venture, government body, or other legal entity other than Plaintiff and Defendants.

TOPICS FOR EXAMINATION

1. Dell's electronic Document database and storage systems, including, but not limited to, Dell's systems for storage of electronic Documents, policies for retention of electronic Documents, and Dell's access protocols or procedures for electronic Documents.
2. Dell's source code storage systems, including, but not limited to, Dell's systems for storage of source code or source code technical Documents, Dell's change logs and/or version control systems, policies for retention of source code or source code technical Documents.
3. The types of Documents you maintain in relation to the source code for Absolute Functionality and/or Microsoft Functionality.
4. Dell's document retention policies.
5. The existence, type, volume, location, and custodians of Documents regarding the design, operation and use (including testing) of Dell Accused Instrumentalities and the Absolute Functionality or Microsoft Functionality in the Dell Accused Instrumentalities.
6. The existence, type, volume, location, and custodians of Documents regarding Dell's integration of Absolute Functionality or Microsoft Functionality into Dell Accused Instrumentalities, including, but not limited to, Dell's "Certified Factory Integration" program.
7. The existence, type, volume, location, and custodians of Documents regarding the competitive analysis, promoting, or marketing of Absolute Functionality or Microsoft Functionality in the Dell Accused Instrumentalities.
8. The existence, type, volume, location and custodians of financial Documents regarding Absolute Functionality, Microsoft Functionality, or Dell Accused Instrumentalities including, but not limited to, the sale, licensing, subscription payments, quantity, revenue, profit, margin, price, or cost of Absolute Functionality or Microsoft Functionality.

9. The existence, type, volume, location, and custodians of any of Documents maintained or generated by Dell's customer or technical support relating to any Absolute Functionality or Microsoft Functionality.

10. The existence, type, volume, location, and custodians of any license agreements, covenants not to sue, settlement agreements, and/or indemnity agreements regarding any Absolute Functionality, Microsoft Functionality, Dell Accused Instrumentalities, or any security related features for Dell Accused Instrumentalities.

11. Dell's corporate structure.

12. The organization and structure of Dell's team(s) responsible for research, development, operation, integration, testing, sale, licensing, marketing, customer service or technical support regarding any Absolute Functionality or Microsoft Functionality in Dell Accused Instrumentalities.

13. The names of the three (3) individuals employed by Dell with the most knowledge regarding design, operation and integration of the Absolute Functionality.

14. The names of the three (3) individuals employed by Dell with the most knowledge regarding design, operation and integration of the Microsoft Functionality.

15. The names of the three (3) individuals employed by Dell with the most knowledge regarding purchasing of, sales of, licensing of, or subscriptions for the Absolute Functionality and Microsoft Functionality.

16. The names of the three (3) individuals with the most knowledge regarding Dell's Communications and business dealings with Softex, Inc. regarding security features for computers, laptops, tablets or other electronic devices.

17. The names of the three (3) individuals with the most knowledge regarding Dell's

Communications and business dealings with Absolute regarding the Absolute Functionality in Dell Accused Instrumentalities.

18. The names of the three (3) individuals with the most knowledge regarding Dell's Communications and business dealings with Microsoft regarding the Microsoft Functionality in Dell Accused Instrumentalities.

19. The names of the three (3) individuals with the most knowledge regarding Dell's business dealings and interactions with Phoenix regarding the Absolute Functionality in Dell Accused Instrumentalities.