

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL TECHNOLOGIES INC. AND DELL INC.,
Petitioners

v.

CLOUD BYTE LLC,
Patent Owner

Patent No. 9,560,177

SECOND DECLARATION OF SU LI

I, Su Li, declare as follows:

1. I am an attorney with the law firm of Farella Braun + Martel LLP, counsel for Dell Technologies Inc. and Dell Inc. (collectively, “Petitioners”).

Unless otherwise stated, the facts stated in this declaration are based on my personal knowledge.

2. I am familiar with the related litigation entitled *Cloud Byte LLC v. Dell Inc. and Dell Technologies Inc.*, Case No. 2:24-cv-00637-JRG (E.D. Tex.). I am informed and believe that Patent Owner did not contact either defendant regarding the asserted patents before filing the complaint in the related litigation.

3. I have reviewed an email dated August 22, 2025 from counsel for Patent Owner to counsel for Petitioners stating: “In accordance with the Court’s Order Focusing Claims and Prior Art (Dkt. 90 at 1), Cloud Byte identifies the following 32 claims as its Preliminary Election of Asserted Claims” and providing the following list of asserted claims: ’544 Patent – claims 1, 13, 22; ’632 Patent – claims 1, 3, 5, 6, 7; ’177 Patent – claims 1, 7; ’265 Patent – claims 1, 2, 3, 4, 8; ’320 Patent – 1, 2, 3, 4, 5, 6; ’249 Patent – claims 11, 12, 15, 16, 17, 20; ’273 Patent – 1, 3, 8, 18, 19. Pursuant to the cited court order, Patent Owner is required to narrow the number of asserted claims to no more than a total of 16 on October 20, 2025.

4. The document submitted by Petitioners identified as EX1037 is a true and correct copy of the recorded assignment history for U.S. Patent No. 9,560,177 obtained from the USPTO Assignment Database at the following address:

<https://assignment.uspto.gov/patent/index.html#/patent/search>.

5. The document submitted by Petitioners identified as EX1038 is a true and correct copy of a Summary of Patent Portfolio for U.S. Patent No. 9,560,177 created using the Lex Machina Patent Portfolio Evaluator tool at

<https://law.lexmachina.com/apps/patent-portfolio/>.

6. The document submitted by Petitioners identified as EX1039 is a true and correct copy of a Summary of Patent Portfolio for U.S. Patent No. 9,313,128 created using the Lex Machina Patent Portfolio Evaluator tool at

<https://law.lexmachina.com/apps/patent-portfolio/>.

7. The document submitted by Petitioners identified as EX1040 is a true and correct copy of an Office Action regarding Application No. 90/019,777, which is an *ex parte* reexamination of U.S. Patent No. 7,739,544 obtained from the USPTO Patent Center at the following address: <https://patentcenter.uspto.gov/>.

8. The document submitted by Petitioners identified as EX1041 is a true and correct copy of a document entitled P.R. 4-5(d) Joint Notice Regarding Claim Construction Chart and attached chart filed in the related litigation.

9. The document submitted by Petitioners identified as EX1042 is a true and correct copy of a press release entitled “Open Networking Foundation Formed to Speed Network Innovation” accessed at <https://opennetworking.org/news-and-events/press-releases/onf-formed-to-speed-network-innovation/>.

10. The document submitted by Petitioners identified as EX1043 is a true and correct copy of a press release entitled “Open Networking Foundation Formed to Speed Network Innovation” accessed at <https://newsroom.cisco.com/c/r/newsroom/en/us/a/y2011/m03/open-networking-foundation-formed-to-speed-network-innovation.html>.

11. The document submitted by Petitioners identified as EX1044 is a true and correct copy of a document entitled “Open Networking Foundation Formed” accessed at <https://www.linux-magazine.com/Online/News/Open-Networking-Foundation-Formed>.

12. The document submitted by Petitioners identified as EX1045 is a true and correct copy of a document entitled “Open Networking Foundation Intellectual Property Rights Policy” accessed at <https://opennetworking.org/wp-content/uploads/2017/07/ONF-IPR-Policy-2016.pdf>.

13. The document submitted by Petitioners identified as EX1046 is a true and correct copy of a press release entitled “NEC and Dell Validate Interoperability, Announce New Distribution Agreement” accessed at

<https://www.necam.com/newsroom/pressannouncements/2015announcements/NECDellValidateInteroperability/>.

14. The document submitted by Petitioners identified as EX1047 is a true and correct copy of a press release entitled “NEC Selected as Finalist for Best of Interop 2014 Award” accessed at

https://www.nec.com/en/press/201403/global_20140313_04.html.

15. The document submitted by Petitioners identified as EX1048 is a true and correct copy of a press release entitled “NEC Chairman Kaoru Yano to Appear as Keynote Speaker at Open Networking Summit 2012” accessed at

https://www.nec.com/en/press/201204/global_20120412_01.html.

16. The document submitted by Petitioners identified as EX1049 is a true and correct copy of a press release entitled “NEC to Highlight Expanded Reach of OpenFlow-enabled SDN during Open Networking Summit 2013” accessed at

https://www.nec.com/en/press/201304/global_20130405_01.html.

17. The document submitted by Petitioners identified as EX1050 is a true and correct copy of a press release entitled “NEC’s Latest SDN Release Increases Scalability 10X with New Unified Network Coordinator (UNC)” accessed at

https://www.nec.com/en/press/201403/global_20140303_03.html.

18. The document submitted by Petitioners identified as EX1051 is a true and correct copy of an article entitled “NEC Showcases Latest SDN/NFV

Capabilities at Open Networking Summit 2015” accessed at

<https://www.acnnewswire.com/press-release/english/23047/nec-showcases-latest-sdn/nfv-capabilities-at-open-networking-summit-2015>.

19. The document submitted by Petitioners identified as EX1052 is a true and correct copy of a press release entitled “Linux Foundation Announces 20+ New Plenary Speakers and 17 Demos in the SDN & NFV Solutions Showcase for Open Networking Summit” accessed at

<https://www.linuxfoundation.org/press/press-release/linux-foundation-announces-20-new-plenary-speakers-and-17-demos-in-the-sdn-nfv-solutions-showcase-for-open-networking-summit>.

20. The document submitted by Petitioners identified as EX1053 is a true and correct copy of a press release entitled “ONF Showcases New ONOS Release, Use Cases and Field Trials at ONS” accessed at

<https://www.linuxfoundation.org/press/press-release/onf-showcases-new-onos-release-use-cases-and-field-trials-at-ons>.

21. The document submitted by Petitioners identified as EX1054 is a true and correct copy of the following webpage:

<https://onseu18.sched.com/speaker/takahashi.tsc>.

22. The document submitted by Petitioners identified as EX1055 is a true and correct copy of the following webpage:

<https://onseu19.sched.com/takahashi.tsc>.

23. The document submitted by Petitioners identified as EX1056 is a true and correct copy of the following webpage:

https://jpn.nec.com/emcstorage/vxrail_Info.html (auto-translated by browser).

24. The document submitted by Petitioners identified as EX1057 is a true and correct copy of the following webpage: <https://cloudbytellc.com/>.

25. The document submitted by Petitioners identified as EX1058 is a true and correct copy of European Patent Application No. EP11858533.0 obtained using the USPTO Global Dossier at <https://globaldossier.uspto.gov/home>.

26. The document submitted by Petitioners identified as EX1059 is a true and correct copy of a European Patent Search Report for EP11858533.0 obtained using the USPTO Global Dossier at <https://globaldossier.uspto.gov/home>.

27. The document submitted by Petitioners identified as EX1060 is a true and correct copy of European Patent Office Notice for EP11858533.0 obtained using the USPTO Global Dossier at <https://globaldossier.uspto.gov/home>.

28. The document submitted by Petitioners identified as EX1061 is a true and correct copy of the USASpending.gov Recipient Profile for Dell Technologies,

Inc. obtained at <https://www.usaspending.gov/recipient/8299830e-68df-0576-3ab3-555c5ad3024f-P/all>.

29. The document submitted by Petitioners identified as EX1062 is a true and correct copy of the USASpending.gov Recipient Profile for Dell Federal Systems L.P. obtained at <https://www.usaspending.gov/recipient/3612de0a-9635-3846-a5a1-7f555fba52df-C/all>.

30. The document submitted by Petitioners identified as EX1063 is a true and correct copy of the search result I obtained using USASpending.gov at www.USASpending.gov. In order to generate the exhibit of EX1063, I used the government website www.USASpending.gov to run a query on sales to the federal government for several Dell PowerSwitch models, using four search terms representing PowerSwitch models that Cloud Byte accuses of infringing the '177 Patent in the related district court litigation. Specifically I chose Dell PowerSwitch models N4032, S4048T-on, S4820T, and S5224F-on. EX1030 (infringement contentions) at 6-7. I did this by first clicking "start searching awards" on the USASpending.gov home page. Next I entered the keyword N4032, followed by the "enter" key. Next I clicked "submit." I followed the same steps to add the keywords "S4048t-on", "S4820t", and "S5224f-on." Once these were added, the screen reflected four active filters. Next I clicked "Download," followed by "Award," followed by "Transaction," followed by "Everything." The

site generated a URL that I clicked to download a zip file containing the data in CSV format. I opened the resulting file in Microsoft Excel. The file contained many columns. In order to generate a readable exhibit for this proceeding, I printed the file to PDF with the following columns visible:

“total_obligated_amount”, “award_base_action_date”, “awarding_agency_name”, “recipient_name”, “prime_award_base_transaction_description”, and “domestic_or_foreign_entity”.

31. The document submitted by Petitioners identified as EX1064 is a true and correct copy of a document entitled “Contracts for August 7, 2024” accessed at <https://www.war.gov/News/Contracts/Contract/Article/3864859/>.

32. The document submitted by Petitioners identified as EX1065 is a true and correct copy of a press release entitled “Dell Technologies Achieves US Department of Defense Validation for Zero Trust Solution” accessed at <https://www.dell.com/en-us/dt/corporate/newsroom/announcements/detailpage.press-releases~usa~2025~04~dell-technologies-achieves-us-department-of-defense-validation-for-zero-trust-solution.htm#/filter-on/Country:en-us>.

33. The document submitted by Petitioners identified as EX1066 is a true and correct copy of a document accessed at

https://jitc.fhu.disa.mil/tssi/cert_pdfs/1905804_DTR6_Dell_NW-PowerSwitches_v10-6-0-0_06JAN2025.pdf.

34. The document submitted by Petitioners identified as EX1067 is a true and correct copy of a file called U_Dell_OS10_Switch_Overview. I accessed this document by accessing the webpage

<https://ncp.nist.gov/checklist/1266/download/12938> and then downloading the zip file at the following address: https://dl.dod.cyber.mil/wp-content/uploads/stigs/zip/U_Dell_OS10_Switch_Y24M12_STIG.zip.

35. In order to determine what forward citations exist for U.S. Patent No. 9,560,177, I went to the U.S. Patent & Trademark Office webpage for “Patent Public Search,” i.e., <https://www.uspto.gov/patents/search/patent-public-search>.

At that webpage, I clicked “Advanced Search,” which led me to the URL <https://ppubs.uspto.gov/pubwebapp/>. In the “Search” pane, I entered the query “9560177” and pressed Enter. This caused the “Document Viewer” pane to show an entry corresponding to U.S. Patent No. 9,560,177, as reflected in the “Document ID” field showing “US 9560177 B2.” I clicked on the button marked with a single close quotation mark (”), which when hovered over reads “Forward citation search.” This action led the “Search Results” pane to show “L3: 0 results found.” Based on my understanding of the documentation for the “Patent Public Search” tool, and based on running forward-citation queries for several other

patents, I understand these results to mean that no United States patent or application has cited U.S. Patent No. 9,560,177. I separately ran a forward-citation search for the published application corresponding to U.S. Patent No. 9,560,177, i.e., U.S. Patent Application Publication No. 2016/0198025. That published application has been cited by only one United States patent: U.S. Patent No. 9,871,859, which was originally assigned to NEC Corp.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on October 20, 2025, in San Francisco, California.

/Su Li/
Su Li
Farella Braun + Martel LLP