

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

STREAMSCALE, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 6:21-cv-00198-ADA
)	
CLOUDERA, INC.,)	JURY TRIAL DEMANDED
AUTOMATIC DATA PROCESSING, INC.,)	
EXPERIAN PLC, WARGAMING)	
(AUSTIN), INC., and)	
INTEL CORPORATION,)	
)	
Defendants.)	

**PLAINTIFF STREAMSCALE'S RESPONSE TO
DEFENDANT INTEL CORPORATION'S MOTION TO DISMISS
PLAINTIFF'S COMPLAINT UNDER FED. R. CIV. P. 12(B)(6)**

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I. INTRODUCTION

Defendant Intel Corporation's ("Intel") Motion to Dismiss Under Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Intel's Motion") is moot. Plaintiff StreamScale, Inc. ("StreamScale") filed a First Amended Complaint for Patent Infringement, pursuant to Rule 15(a)(1)(B). (ECF No. 44.) In its First Amended Complaint, StreamScale included additional detailed factual allegations regarding (i) Intel's widespread knowledge of StreamScale, StreamScale's patents, and StreamScale's then-pending-patent applications, (ii) Intel inducing infringement of StreamScale's patents, and (iii) Intel's willful and wanton conduct. Those additional allegations squarely refute the gravamen of Intel's Motion. As a result, the Court should deny Intel's motion as moot.

Intel does not deny it had express knowledge of StreamScale's patents prior to the filing of this lawsuit. Nor can it plausibly deny that fact given the extensive record of its pre-suit knowledge of StreamScale and its patents, and its conduct notwithstanding that knowledge. As Intel is well aware, StreamScale and Intel have an extensive history and Intel has full knowledge that:

- StreamScale provided Intel with express notice of Intel's infringement years ago;
- Despite this notice, Intel continued to develop, release, and support ISA-L;
- Intel instructed others to follow its lead and ignore StreamScale and its patent rights; and
- Intel reprimanded at least one of its engineers for suggesting to Intel that ISA-L might run afoul of StreamScale's patent rights.

StreamScale has included detailed factual allegations relating to this history in its First Amended Complaint, along with many other detailed allegations regarding Intel's indirect infringement and willful and wanton conduct. StreamScale's First Amended Complaint supersedes the Original Complaint Intel attacked and directly addresses Intel's procedural criticisms. Consequently, Intel's Motion should be denied as moot.

II. THE FILING OF AN AMENDED COMPLAINT MOOTS A PREVIOUSLY FILED MOTION TO DISMISS

“The filing of an amended complaint, in most instances, moots a previously filed motion to dismiss.” *Sanchez v. KHBJR Enters. LLC*, No. SA-17-CV-00811-DAE, 2017 WL 10841345, at *1 (W.D. Tex. Nov. 15, 2017) (collecting cases); *see also Aetna Inc. v. People’s Choice Hospital, LLC*, No. SA-18-CV-00323-OLG, 2018 WL 6220169, at *2 (W.D. Tex. June 18, 2018) (collecting cases). That is especially true where, as here, the Amended Complaint “allege[s] additional factual allegations that directly address arguments in Defendants’ motion to dismiss.” *Sanchez*, 2017 WL 10841345, at *1.

“An amended pleading supersedes the original and renders it of no legal effect.” *Dynamic Tool Co. v. Cont’l Casualty Co.*, No. EP-13-CV-224-DB, 2013 WL 12130306, at *1 (W.D. Tex. Oct. 7, 2013) (citing *King v. Dugan*, 31 F.3d 344, 346 (5th Cir. 1994)). “Consequently, motions based on superseded complaints likewise have no legal effect.” *Id.* (citing 6 CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MAY KAY KANE, FEDERAL PRACTICE & PROCEDURE § 1476 (2d ed. 1990)).

III. ARGUMENT

StreamScale’s Amended Complaint alleges additional factual allegations that directly address arguments in Intel’s motion to dismiss. Accordingly, Intel’s motion is moot. *Sanchez*, 2017 WL 10841345, at *1. The Court should dismiss Intel’s motion to dismiss as moot on the basis that the Complaint attacked in Intel’s motion has been superseded by StreamScale’s Amended Complaint. *Id.*; *see also Aetna*, 2018 WL 6220169, at *3 (Garcia, C.J.) (“Here, Plaintiffs’ Amended Complaint supersedes the Original Complaint that is the subject of Defendants’ Motions to Dismiss”).

The additional factual allegations in the First Amended Complaint that directly address arguments in Intel’s motion to dismiss include allegations that demonstrate Intel (i) had express pre-suit knowledge of at least two of the StreamScale Patents, (ii) was willfully blind to StreamScale and its patents, and (iii) had express knowledge of all of the StreamScale Patents-in-Suit and its infringement thereof since at least March 5, 2021 when Intel was served with the Original Complaint in this case. Further, StreamScale has added additional details in its First Amended Complaint to demonstrate Intel’s induced infringement of StreamScale’s patents and Intel’s willful and wanton conduct.

A. THE FIRST AMENDED COMPLAINT ALLEGES THAT INTEL HAD EXPRESS PRE-SUIT KNOWLEDGE OF AT LEAST TWO OF THE PATENTS-IN-SUIT

StreamScale’s First Amended Complaint alleges that Intel learned of a July 5, 2013 letter that StreamScale sent to USENIX, a computing systems association, regarding StreamScale’s then-patent-pending technology. (ECF No. 44 ¶ 83.) Within days of StreamScale’s letter, Intel publicly announced its excitement to support development of erasure code solutions. (*Id.* ¶ 84.) Intel saw the opportunity to reduce the size of data on disk by up to half, decrease costs by more than 50%, and reduce both hardware requirement costs and power and cooling costs. (*Id.*) Intel saw accelerated erasure code technology—precisely the type of technology detailed in a StreamScale patent application that published less than a week prior to Intel’s announcement—was “long overdue” and Intel was excited to support, promote, and use it in cloud environments, like Cloudera’s. (*Id.* ¶¶ 83–84.)

By August 2013, at least one Intel employee was commenting on missives posted online regarding StreamScale and its then-pending patent portfolio. (*Id.* ¶ 87.) Indeed, on March 10, 2014, Intel employees reviewed and collected a significant quantity of information about

StreamScale, its attorneys, and its patent applications. (*Id.* ¶ 88.) On that day, one or more Intel employees visited a number of specific pages on StreamScale’s website, including:

- those detailing StreamScale’s then-pending-patent applications;
- those summarizing StreamScale’s company history and technology;
- those making recent new and press releases available to the public;
- those identifying StreamScale’s employees and attorneys; and
- those hosting academic papers authored by StreamScale’s employees.

(*Id.*) Furthermore, Intel employees accessed and downloaded electronic copies of one or more of StreamScale’s patents and patent applications, including directly from StreamScale’s website.

In early 2014, Intel was contacted about potential issues involving StreamScale, StreamScale’s patent-pending technology, and ISA-L. (*Id.* ¶ 89.) When an Intel employee inquired internally about whether ISA-L ran afoul of StreamScale and its patent-pending technology, the employee was reprimanded by Intel. (*Id.* ¶ 101.)

From September 19, 2014 through at least July 30, 2015, StreamScale and Intel engaged in extensive written and oral communications regarding StreamScale and StreamScale’s patents. (*Id.* ¶ 90.) Through those discussions, StreamScale provided Intel with express notice of U.S. Patent No. 8,683,296 (“the ’8-296 Patent”) and that U.S. Patent Application No. 14/223,740¹ had been “recently allowed.” (*Id.*)

Separately, on or about March 5, 2015, Intel employee Tushar Gohad publicly indicated that Jerasure and GF-Complete were “strategically important.” (*Id.* ¶ 91.) Of course, by that time, one of the authors of GF-Complete had publicly stated that StreamScale “asserts that the use of

¹ U.S. Patent Application No. 14/223,740 was published by the U.S. Patent and Trademark Office on January 8, 2015 (ECF No. 1–2 at [65]) and ultimately issued as U.S. Patent No. 9,160,374 (“the ’374 Patent”) on October 13, 2015 (*id.* at [45]).

GF-Complete (particularly as part of Jerasure 2.0 or later) or any similar software, method or code for erasure coding infringes StreamScale’s issued United States Patent No. 8,683,296.” (*Id.*)

In April 2015, Intel employee Paul Luse indicated that “we are all well aware” of StreamScale, its patents, and its technology. (*Id.* ¶ 92.) Mr. Luse then appears to have encouraged others to follow Intel’s lead and simply ignore StreamScale and its patent rights. (*Id.*)

In light of all of these facts, Intel—a sophisticated, Fortune 50 company (*id.* ¶ 94)—would have this Court believe that it did not have actual knowledge of all of the StreamScale Patents-in-Suit, which are continuations of each other. But these facts demonstrate that one of two things is true. Either (1) Intel did in fact have actual knowledge of all of the StreamScale Patents-in-Suit, or (2) following express knowledge of one issued patent and one recently allowed patent application, Intel stuck its head in the sand and willfully blinded itself to the remainder of the StreamScale Patents-in-Suit. Any other contention is simply implausible.

B. IN THE ALTERNATIVE, THE FIRST AMENDED COMPLAINT ALLEGES THAT INTEL WAS WILLFULLY BLIND TO STREAMSCALE’S PATENTS

Even if Intel did not have actual knowledge of all of the StreamScale Patents-in-Suit—a contention Stream Scale considers implausible—StreamScale has nonetheless plead that Intel was willfully blind to each of StreamScale’s Patents-in-Suit and Intel’s infringement thereof.

Intel is a Fortune 50 company, with revenues exceeding \$70 billion annually. (*Id.* ¶ 94.) It has a long history with United States patent litigation. (*Id.* ¶ 95.) Indeed, Intel employs several attorneys and counsel to manage its offensive and defensive patent litigation docket. (*Id.*) It also employs several attorneys to evaluate, manage, and track patent assertions in its industry. (*Id.*) Naturally, that includes the attorneys with whom StreamScale communicated between September 19, 2014 and July 30, 2015. (*See id.* ¶ 90.)

Intel is also believed to be a member or client of multiple patent risk management services or companies. (*Id.* ¶¶ 96–99.) It now maintains a publicly-known corporate policy forbidding its employees from reading patents held by outside companies or individuals. (*Id.* ¶ 100.) That policy is designed to avoid enhanced damages from willful infringement of United States Patents. (*Id.*) These associations, activities, and other steps Intel has taken have rendered Intel willfully blind to StreamScale’s patents and the intellectual property rights of others. (*Id.* ¶ 102.) And as explained above, Intel’s own engineers involved with ISA-L suggested that ignoring StreamScale was always the best course for both Intel and others in the industry. (*Id.* ¶ 92.)

C. THE FIRST AMENDED COMPLAINT ALLEGES THAT INTEL HAS HAD EXPRESS KNOWLEDGE OF STREAMSCALE’S PATENTS AT LEAST SINCE SERVICE OF THE COMPLAINT IN THIS CASE

Intel was formally served with the Original Complaint in this case on March 5, 2021. (*Id.* ¶ 93; ECF No. 14.) Thus, at an absolute minimum, Intel has had express knowledge of each of the Patents-in-Suit and its infringement thereof at least since March 5, 2021. (Dkt. No. 44 ¶ 93.) Even after being served with StreamScale’s Original Complaint, Intel continued (and continues to this day) to induce the other Defendants to infringe StreamScale’s patents. Intel’s ongoing conduct is—at a minimum—willful and wanton. (*See id.* ¶¶ 129, 147, 165, 183, 201, 219.)

D. STREAMSCALE ALLEGES ADDITIONAL DETAILS IN THE FIRST AMENDED COMPLAINT REGARDING INTEL’S INDUCEMENT OF INFRINGEMENT AND WILLFUL CONDUCT

Intel’s acts of inducement are legion. For example, Intel maintains a website at URL <https://software.intel.com/content/www/us/en/develop/tools/isa-l.html> to promote ISA-L, including to the other defendants in the case. (*Id.* ¶¶ 122, 141, 159, 177, 195, 213.) Intel produces videos, available on its website, regarding ISA-L and its use. (*Id.*) Intel describes “case studies” on big data optimization using ISA-L and distributes those materials through its website. (*Id.*) Intel hosts articles, blog posts, and webinars regarding the use of ISA-L on its website. (*Id.*)

Intel has also produced and distributed an API Reference Manual for ISA-L that it has updated regularly. (*Id.*) It also provides technical support for ISA-L to the other defendants in the case when necessary. (*Id.*) Intel induces others to use ISA-L in an infringing manner in order to drive sales of other Intel products and services to the other defendants in the case. (*Id.* ¶¶ 123, 142, 160, 178, 196, 214.)

In view of Intel's knowledge of—or willful blindness to—StreamScale and the Patents-in-Suit, Intel's knowledge of—or willful blindness to—its infringement of StreamScale's Patents-in-Suit, and Intel's subsequent conduct, its conduct has been and continues to be willful and wanton. (*Id.* ¶¶ 129, 147, 165, 183, 201, 219.)

IV. CONCLUSION

Intel's Motion is moot and the Court should deny it as such. StreamScale's First Amended Complaint contains detailed allegations supporting both its claims of indirect infringement and willful infringement for each of the StreamScale Patents-in-Suit. StreamScale need not prove its entire case at the pleading stage—it need only show that its claims are plausible. StreamScale's First Amended Complaint certainly clears this low pleading hurdle.

Dated: May 28, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on May 28, 2021, I electronically submitted the foregoing document with the clerk of the United States District Court for the Western District of Texas, using the electronic case management CM/ECF system of the Court which will send notification of such filing to the following:

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