

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

ACCELERON, LLC,

Plaintiff,

v.

MICROWAY, INC.

Defendant.

Civil Action File No.

**JURY TRIAL DEMANDED**

**COMPLAINT**

Plaintiff Acceleron, LLC (“Acceleron”) states its Complaint against Defendant Microway Incorporated (“Microway”) as follows:

**INTRODUCTION**

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code to enjoin infringement and obtain damages from Defendant’s unauthorized manufacture, use, sale, offer to sell, and/or importation into the United States for the subsequent use or sale of products or methods that infringe one or more claims of U.S. Patent No. 6,948,021, entitled “Cluster Component Network Alliance System and Method for Enhancing Fault

Tolerance and Hot-Swapping” (hereinafter “the ‘021 patent”), which is owned by Acceleron.

### **JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

3. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§1391(b) and (c) and 1400(b) in that, upon information and belief, Defendant has done business in this District, has committed acts of infringement in this District, and continues to commit acts of infringement in this District, thus entitling Acceleron to relief.

4. Upon information and belief, the Court has personal jurisdiction over Microway due to each Microway’s contacts with the State of Georgia arising from Microway transacting and/or having transacted business in this judicial district by among other things, offering its products and/or services to customers, affiliates, and partners, in this judicial district.

5. Upon information and belief, Defendant Microway may be served this Complaint via its Registered Agent, Ann Fried, located at 12 Richards Road, Plymouth, Mass. 02360.

## **PARTIES**

6. Acceleron is a Delaware limited liability company having its principal place of business at 3350 Riverwood Parkway, Suite 800, Atlanta, Georgia 30339.

7. Acceleron is the owner, by assignment, of all right, title, and interest in and to the '021 patent, including the right to bring suit for patent infringement.

8. Upon information and belief, Defendant Microway is a Delaware corporation with its principal place of business at 12 Richards Road, Plymouth, Mass. 02360.

## **COUNT ONE: INFRINGEMENT OF U.S. PATENT NO. 6,498,021**

9. Acceleron realleges and incorporates herein the allegations of paragraphs 1 through 8 of this Complaint as if fully set forth herein.

10. Acceleron is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 6,948,021, which issued from the United States Patent and Trademark Office on September 20, 2005.

11. A true and correct copy of the '021 patent is attached hereto as Exhibit A.

12. Upon information and belief, Defendant Microway makes, uses, sells, offers for sale, and/or imports one or more computer network appliances and/or

related methods, including but not limited to products known as Microway's NumberSmasher and Navion clusters and servers.

13. Upon information and belief, Defendant has infringed directly and/or indirectly and continues to infringe directly and/or indirectly the '021 patent.

14. Defendant's infringing acts include, but are not limited to, the manufacture, use, sale, importation, and/or offer for sale of Microway's NumberSmasher and Navion cluster and server products and related hardware and components.

15. Upon information and belief, Defendant's infringement is willful.

16. Upon information and belief, Acceleron has been irreparably harmed by Defendant's infringements of Acceleron's patent rights.

17. Defendant's unauthorized and infringing uses of Acceleron's '021 patent have threatened the value of this intellectual property because Defendant's conduct results in loss of Acceleron's lawful patent rights to exclude others from making, using, selling, offering to sell and/or importing the patented invention.

18. The acts of infringement of the '021 patent by Defendant have caused damage to Acceleron, and Acceleron is entitled to recover from Defendant the damages sustained by Acceleron as a result of Defendant's wrongful acts in an amount subject to proof at trial.

19. The infringement of Acceleron's exclusive rights under the '021 patent by Defendant will continue to damage Acceleron, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Acceleron prays that the Court enter judgment in its favor and against Defendant as follows:

- A. That the Court enter judgment of infringement against Defendant;
- B. That Defendant be ordered to pay damages adequate to compensate Acceleron for its acts of infringement, pursuant to 35 U.S.C. § 284;
- C. That Acceleron be awarded increased damages under 35 U.S.C. § 284 due to Defendant's willful infringement of the '021 patent;
- D. That the Court find that this case is exceptional and award Acceleron its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- E. That Defendant, its officers, agents, employees, and those acting in privity with it, be permanently enjoined from further infringement, contributory infringement, and/or inducing infringement of the patent-in-suit, pursuant to 35 U.S.C. § 283;
- F. That Defendant be ordered to pay prejudgment and post-judgment interest;

G. That Defendant be ordered to pay all costs associated with this action;  
and

H. That Acceleron be granted such other and additional relief as the  
Court deems just, equitable, and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Acceleron, LLC demands a trial  
by jury of all issues triable of right by a jury.

This 9th day of March, 2012.

/s/ N. Andrew Crain

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