

Complaint

121 F.T.C.

IN THE MATTER OF

DELL COMPUTER CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3658. Complaint, May 20, 1996--Decision, May 20, 1996*

This consent order prohibits, among other things, a Texas-based personal computer manufacturer from enforcing its patent rights against computer manufacturers using the VL-bus, a mechanism to transfer instructions between the computer's central processing unit and its peripherals.

Appearances

For the Commission: *Michael E. Antalics* and *William J. Baer*.

For the respondent: *Raymond Jacobsen* and *Kirin Corcoran*,
Howrey & Simon, Washington, D.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondent, Dell Computer Corporation, a corporation, has violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

PARAGRAPH 1. Respondent Dell Computer Corporation ("Dell") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 2214 West Braker Lane, Texas.

PAR. 2. Respondent is a publicly traded for-profit corporation engaged in the innovation, development, manufacture, and sale of personal computer systems throughout the United States. By virtue of its purposes and activities, respondent is a corporation within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 3. Dell's acts and practices, including the acts and practices alleged in this complaint, are in or affect commerce as defined in the Federal Trade Commission Act.

PAR. 4. In February 1992 Dell became a member of the Video Electronics Standards Association ("VESA"), a non-profit standards-setting association composed of virtually all major U.S. computer hardware and software manufacturers.

PAR. 5. At or about the same time, VESA began the process of setting a design standard for a computer bus design, later to be known as the VESA Local Bus or "VL-bus." Like all computer buses, the VL-bus carries information or instructions between the computer's central processing unit and the computer's peripheral devices such as a hard disk drive, a video display terminal, or a modem.

PAR. 6. By June 1992 VESA's Local Bus Committee, with Dell representatives sitting as members, approved the VL-bus design standard, which improved upon then-existing technology by more quickly and efficiently meeting the transmission needs of new, video-intensive software. One year earlier, in July 1991, Dell had received United States patent number 5,036,481 (the "'481 patent"), which, according to Dell, gives it "exclusive rights to the mechanical slot configuration used on the motherboard to receive the VL-bus card." Nonetheless, at no time prior to or after June 1992 did Dell disclose to VESA's Local Bus Committee the existence of the '481 patent.

PAR. 7. After committee approval of the VL-bus design standard, VESA sought the approval of the VL-bus design standard by all of its voting members. On July 20, 1992, Dell voted to approve the preliminary proposal for the VL-bus standard. As part of this approval, a Dell representative certified in writing that, to the best of his knowledge, "this proposal does not infringe on any trademarks, copyrights, or patents" that Dell possessed. On August 6, 1992, Dell gave final approval to the VL-bus design standard. As part of this final approval, the Dell representative again certified in writing that, to the best of his knowledge, "this proposal does not infringe on any trademarks, copyrights, or patents" that Dell possessed.

PAR. 8. After VESA's VL-bus design standard became very successful, having been included in over 1.4 million computers sold in the eight months immediately following its adoption, Dell informed certain VESA members who were manufacturing computers using the new design standard that their "implementation of the VL-bus is a violation of Dell's exclusive rights." Dell

demanded that these companies meet with its representatives to "determine . . . the manner in which Dell's exclusive rights will be recognized" Dell followed up its initial demands by meeting with several companies, and it has never renounced the claimed infringement.

PAR. 9. By engaging in the acts or practices described in paragraphs four through eight of this complaint, respondent Dell has unreasonably restrained competition in the following ways, among others:

(a) Industry acceptance of the VL-bus design standard was hindered because some computer manufacturers delayed their use of the design standard until the patent issue was clarified.

(b) Systems utilizing the VL-bus design standard were avoided due to concerns that patent issues would affect the VL-bus' success as an industry design standard.

(c) The uncertainty concerning the acceptance of the VL-bus design standard raised the costs of implementing the VL-bus design as well as the costs of developing competing bus designs.

(d) Willingness to participate in industry standard-setting efforts have been chilled.

PAR. 10. The acts or practices of respondent alleged herein were and are to the prejudice and injury of the public. The acts or practices constitute unfair methods of competition in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act. These acts or practices are continuing and will continue, or may recur, in the absence of the relief requested.

Commissioner Azcuenaga dissenting.

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of the draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and