

\$30M Ends Dell's IP Feud With Pure Storage

By **Kevin Penton**

Law360, New York (October 19, 2016, 2:53 PM EDT) -- Pure Storage will pay \$30 million to Dell as part of a settlement of all litigation between the data storage companies involving allegations of violated contracts, infringement of an EMC patent and pilfered trade secrets, according to a publicly filed report.

The specific terms of the settlement between Pure Storage Inc. and Dell Inc. — which recently acquired EMC Corp. — are confidential, but will include a licensing deal for EMC's U.S. Patent No. 7,434,015 and mutual releases, according to the Form 8-K that Pure Storage filed Tuesday with the U.S. Securities and Exchange Commission.

Officials for both companies declined to comment Tuesday beyond a terse statement released by Pure Storage that largely echoed the language in the 8-K, a report that public companies are required to file with the SEC after significant events.

A Delaware federal judge in September had granted Pure Storage a new trial on the issue of whether the '015 patent — which involves a technology that saves storage space by eliminating duplicate copies of repeating data — was anticipated by an earlier Sun Microsystems Inc. patent. A jury in March had found that the patent was valid and that Pure Storage infringed, ordering it to pay \$14 million in royalties to EMC, according to court documents.

The verdict prompted EMC to file a new suit in Delaware federal court against its rival, arguing that the damages award covered only a limited period and only a limited set of Pure Storage products, and that EMC would seek additional damages from "extensive sales of later-released models of Pure products."

Additionally, EMC sought a preliminary injunction against Pure Storage after the verdict to block the company from selling its new line of storage products, arguing it is not substantially different from the line found to be infringing.

Pure Storage shot back in a May filing that it has redesigned its software in the wake of the verdict and that an injunction is unwarranted because EMC doesn't face any future injury.

The two rivals also squared off in the District of Massachusetts, where trial was expected to kick off soon on a complex set of allegations involving contracts, patents and trade secrets that prompted a federal magistrate judge in September to say she felt "angst" over the scattershot nature of the arguments.

"This court is not going to make rulings on endless random thoughts," U.S. Magistrate Judge Judith G.

Dein said while urging the sides to simplify and narrow the issues in the case. "I'm really worried about this."

EMC is represented in the Delaware litigation by Steven Kalogeras, Jordan H. Bekier, Kate Dominguez, Laura Corbin, Joshua A. Krevitt, Paul E. Torchia and Stuart M. Rosenberg of Gibson Dunn, Chris R. Ottenweller, Matthew H. Poppe, Jesse Y. Cheng, Alyssa M. Caridis and T. Vann Pearce Jr. of Orrick Herrington & Sutcliffe LLP, Rodger Dallery Smith II, Jack B. Blumenfeld and Jeremy A. Tigan of Morris Nichols Arsht & Tunnell LLP, and in-house by Paul T. Dacier, Krishnendu Gupta, William R. Clark and Thomas A. Brown. EMC is represented in the Massachusetts litigation by Paul D. Popeo, Michael H. Bunis, G. Mark Edgarton, Margaret E. Ives and Kevin C. Quigley of Choate Hall & Stewart LLP.

Pure Storage is represented in the Delaware litigation by Robert A. Van Nest, Matthew Werdegar, R. Adam Lauridsen, Corey Johanningmeier and David W. Rizk of Kecker & Van Nest LLP, John W. Shaw and David M. Fry of Shaw Keller LLP, and in-house by Joseph FitzGerald. Pure Storage is represented in the Massachusetts litigation by Michael Sheetz, Adam S. Gershenson, Katie Versfelt, Andrew Turnbull, Elizabeth Inglis, Courtney Caruso, Connor Cobean, Arnold Blair, Jen Donovan and Mary Kalil of Cooley LLP.

The cases are EMC Corp. et al. v. Pure Storage Inc., case numbers 1:16-cv-00176 and 1:13-cv-01985, in the U.S. District Court for the District of Delaware, and EMC Corp. v. Pure Storage Inc., case number 1:13-cv-12789, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Brian Amaral and Suevon Lee. Editing by Edrienne Su.