

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

TULIP COMPUTERS INTERNATIONAL )  
B.V., )  
 )  
Plaintiff, )  
 )  
v. ) Civil Action No. 00-981-KAJ  
 )  
DELL COMPUTER CORPORATION, )  
 )  
Defendant. )

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**MEMORANDUM ORDER**

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This is a patent infringement lawsuit involving U.S. Patent No. 5,594,621 (issued Jan. 14, 1997) (“the ‘621 patent”) owned by Tulip Computer International B.V. (“Tulip”), a Dutch corporation with its principal place of business in the Netherlands. (D.I. 1.) In accordance with the Court’s Order<sup>1</sup> of November 4, 2002 (D.I. 390), Dell, on December 3, 2002, submitted a letter brief seeking leave to file a motion for partial summary judgment on the issue of damages. (D.I. 409.) On December 9, 2002, Tulip responded with a letter brief arguing that a motion for summary judgment with full briefing on this issue would be wasteful because Dell’s position is without merit. (D.I. 412.)

Summary judgment under Rule 56 of the Federal Rules of Civil Procedure is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any

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<sup>1</sup>This action was originally assigned within this Court to the Honorable Roderick R. McKelvie. (D.I. 1.) Judge McKelvie retired from the Court in 2002 and the case was referred to Magistrate Judge Mary Pat Thyng. (See D.I. 199.) The case was reassigned to the undersigned on January 6, 2003. (D.I. 427.)

material fact and that the moving party is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(c).

Dell seeks leave to move the Court for summary judgment on Tulip’s claim for damages because, Dell argues, Tulip’s reasonable royalty claim is flawed and not cognizable under 35 U.S.C. § 284. (D.I. 409 at 1-2.) Moreover, contends Dell, controlling law, including the Federal Circuit’s decision in *Rite-Hite Corp. v. Kelley Co.*, 56 F.3d 1538 (Fed. Cir. 1995) (en banc) supports its position and requires summary judgment since Tulip’s damages calculations are not based on proper criteria. (*Id.* at 4-11.)

Tulip, in response, argues that Dell’s assertions derive from an improper reading of the patent, ignore industry standards for calculating royalty base, and misapply the law regarding the “entire market value rule”. (D.I. 412 at 1.) Tulip contends that the claims of the ‘621 patent support its position and that Dell’s attempt to narrow the scope of damages is a blatant attempt to rewrite the claims of the patent to exclude covered items. (*Id.* at 1-2.) Further, Tulip asserts that its calculations are based on customary standards in the personal computer industry. (*Id.* at 2-4.) Lastly, Tulip maintains that the “entire market value rule” as discussed in *Rite-Hite* justifies its calculations. (*Id.* at 4-8.)

The Court DENIES Dell’s request for leave to file a motion for partial summary judgment on Tulip’s claim for damages. Permitting the request would prove futile since the Court is well apprised of the parties’ positions from their letters on the issue of damages (D.I. 409, D.I. 412) and, having considered each parties’ arguments, has

determined that summary judgment cannot be granted at this time because material facts remain in dispute as to the proper method for determining a royalty base upon which to calculate damages, if it is determined that the '621 patent has been infringed.

Kent A. Jordan  
UNITED STATES DISTRICT JUDGE

Wilmington, Delaware  
April 3, 2003