

**FEDERAL MARITIME COMMISSION****Ocean Freight Forwarder License; Applicants**

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Perform Air International, Inc., 2111 Welch Street, #B222, Houston, TX 77019, Officers: Jean-Jacques Gouelle, President; Shlomit Shimrat, Secretary/Branch Manager

AFS, Inc., dba Denali International, 80 Yesler Way, Seattle, WA 98104, Officers: James L. Dodson, President; Pamela Held, Vice President

Summit Trade Specialists (U.S.), Inc., 4621 Grumman Drive, Medford, OR 97504, Officers: Dennis E. Schrank, President; Sidney Gould, Secretary.

Dated: November 13, 1995.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 95-28441 Filed 11-21-95; 8:45 am]

BILLING CODE 6730-01-M

**FEDERAL TRADE COMMISSION**

[File No. 931-0097]

**Dell Computer Corp.; Consent Agreement With Analysis To Aid Public Comment**

**AGENCY:** Federal Trade Commission.

**ACTION:** Consent agreement.

**SUMMARY:** In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require Dell not to enforce patent rights against computer manufacturers using the VL-bus, a mechanism to transfer instructions between a computer's central processing unit and peripherals such as a video monitor, which had been accepted by the Video Electronics Standards Association (VESA) as the industry standard. The Commission had alleged that Dell, as a member of the VESA, did not disclose to other VESA members that it held patent rights to the VL-bus technology at the time the VESA standard for such technology was adopted and then later attempted to

enforce those patent rights against certain VESA members, in an effort to unilaterally impose costs on its rivals.

**DATES:** Comments must be received on or before January 22, 1996.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** William J. Baer, Bureau of Competition, Federal Trade Commission, H-374, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. (202) 326-2932.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

**Agreement Containing Consent Order To Cease and Desist**

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the Dell Computer Corporation ("Dell"), and it now appearing that Dell Computer Corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated, and providing for other relief,

*It is hereby agreed* by and between the proposed respondent, by its duly authorized officer and its attorney and counsel for the Commission that:

1. Proposed respondent Dell is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 2214 West Braker Lane, Austin, Texas 78758.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. Proposed respondent shall submit with this agreement an initial report signed by the proposed respondent setting forth in precise detail the manner in which the proposed respondent will comply with Paragraph IV of the order when and if entered. Such report will not become part of the public record unless and until the accompanying agreement and order are accepted by the Commission. At the time such report is submitted, proposed respondent may request confidentiality for any portion thereof with a precise showing of justification therefor.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules of practice, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft complaint and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S.

Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or agreement may be used to vary or contradict the terms of the order.

8. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

*It is ordered* that, as used in this order, the following definitions shall apply:

A. "Respondent" or "Dell" means Dell Computer Corporation, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Dell Computer Corporation, their successors and assigns, and their directors, officers, employees, agents and representatives.

B. "Designated representative" means the person appointed by Dell to the standard-setting organization who communicates respondent's position regarding respondent's patent rights related to any standard under consideration by the standard-setting organization.

C. "VESA" means the Video Electronics Standards Association, located at 2150 North First Street, Suite 440, San Jose, California, 95131.

D. "VL-bus" means the computer local bus design standard VESA established in August 1992 for the transmission of computer information between a computer's central processing unit and certain computer peripheral devices.

E. "'481 patent" means United States patent number 5,036,481.

F. "Commission" means the Federal Trade Commission.

II

*It is further ordered* that, within thirty (30) days after the date of this order becomes final, and until July 31, 2008, respondent shall cease and desist all

efforts it has undertaken by any means, including without limitation the threat, prosecution or defense of any suits or other actions, whether legal, equitable, or administrative, as well as any arbitrations, mediations, or any other form of private dispute resolution, through or in which respondent has asserted that any person or entity, by using or applying VL-bus in its manufacture of computer equipment, has infringed the '481 patent.

III

*It is further ordered* that, until July 31, 2008, respondent shall not undertake any new efforts to enforce the '481 patent by threatening, prosecuting or defending any suit or other action, whether legal, equitable, or administrative, as well as any arbitration, mediation, or other form of private dispute resolution, through or in which respondent claims that any person or entity, by using or applying VL-bus in its manufacture of computer equipment, has infringed the '481 patent.

IV

*It is further ordered* that, for a period of ten (10) years after the date this order becomes final, respondent shall cease and desist from enforcing or threatening to enforce any patent rights by asserting or alleging that any person's or entity's use or implementation of an industry design standard infringes such patent rights, if, in response to a written inquiry from the standard-setting organization to respondent's designated representative, respondent intentionally failed to disclose such patent rights while such industry standard was under consideration.

V

*It is further ordered* that, for a period of ten (10) years after this order becomes final, respondent shall maintain the procedure for assuring compliance with Paragraph IV of this order, as accepted by the Commission pursuant to Paragraph 4 of the Agreement Containing Consent Order to Cease and Desist.

VI

*It is further ordered* that respondent shall:

A. Within thirty (30) days after the date this order becomes final, distribute a copy of this order, complaint and the announcement shown in Appendix A to this order to VESA, to those members of VESA that Dell contacted regarding possible infringement of the '481 patent, and to any other person or entity to whom respondent has sent notice

regarding its claim that the implementation of the VL-bus standard conflicts with or infringes the '481 patent.

B. Within thirty (30) days after the date this order becomes final, distribute a copy of this order, complaint and the announcement shown in Appendix A to this order to every officer and director of respondent, and to every employee of respondent whose responsibilities include acting as respondent's designated representative to any standard-setting organization, group or similar body of which respondent is a member.

C. For a period of five (5) years after the date this order becomes final, furnish a copy of this order and complaint to each new officer and director of respondent and to every new employee of respondent whose responsibilities will or do include acting as respondent's designated representative to any standard-setting organization, group or similar body of which respondent is a member. Such copies must be furnished within thirty (30) days after any such persons assume their position as an officer, director or employee. For purposes of this paragraph VI.C., "new employee" shall include without limitation any of respondent's employees whose duties change during their employment to include acting as respondent's designated representative to any standards-setting organization, group or similar body of which respondent is a member.

D. For a period of ten (10) years after the date this order becomes final, respondent shall furnish each standard-setting organization of which it is a member and which it joins a copy of the order and respondent shall identify to each such organization the name of the person who will serve as respondent's designated representative to the standard-setting organization.

VII

*It is further ordered* that respondent shall:

A. Within ninety (90) days after the date this order becomes final, and annually thereafter for five (5) years on the anniversary of the date this order becomes final, and at such other times as the Commission may, by written notice to the respondent, require, file a verified written report with the Commission setting forth in detail the manner and form in which the respondent has complied and is complying with this order.

B. For a period of ten (10) years after the date this order becomes final, maintain and make available to

Commission staff, for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with the activities covered by Paragraphs V and VI of this order.

C. Notify the Commission at least thirty (30) days prior to any proposed change in respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in respondent that may affect compliance obligations arising out of this order.

#### Appendix A

##### Announcement

Dell Computer Corporation has entered into a consent agreement with the Federal Trade Commission. Pursuant to this consent agreement, the Commission issued an order on [Date] that prohibits Dell from enforcing its United States patent number 5,036,481 against any company for such company's use of the Video Electronics Standards Association's VL-bus standard.

For more specific information, please refer to the FTC order itself, a copy of which is attached for your information.

General Counsel,

*Dell Computer Corporation.*

##### Dell Computer Corporation, Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Dell Computer Corporation ("Dell"), which is located in Austin, Texas. The agreement would settle charges by the Commission that the proposed respondent violated Section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition related to VL-bus design standards for personal computing systems.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

##### The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleged that Dell has engaged in acts and practices that have unreasonably restrained competition to use the VL-bus design for personal computers. The complaint alleges that 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. 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.

According to the complaint, 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."

The complaint states that 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. 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 August 6, 1992, Dell's representative approved the final VL-bus design standard. As part of its approval, a 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. At no time during the standard-setting process did Dell disclose to VESA's Local Bus Committee the existence of the '481 patent.

The complaint alleges that 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.

The complaint also alleges that the purpose or effects of the challenged acts or practices have been to restrain competition unreasonably in the following ways:

(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.

If a company misrepresents its patent rights to a standard-setting-organization, thereby leading the organization to adopt a particular standard that may infringe on the company's patent rights, the company's later efforts to take advantage of market power resulting from the standard, rather than from some inherent value of the patent, constitutes a violation of Section 5. *Cf. Potter Instrument Co. v. Storage Technology Corp.*, 641 F.2d 190 (4th Cir.) (court would estop enforcement of patent where patent holder participated in a standard-setting process, intentionally failed to disclose the existence of its patent, and waited six years until the standard was widely adopted before seeking to enforce the patent), *cert. denied* 454 U.S. 832 (1981); III P. Areeda, *Antitrust Law* ¶ 707h at 141-42 (1978) (negligent misrepresentation to patent office can constitute exclusionary act for equitable antitrust purposes).

##### The Proposed Consent Order

Part I of the order covers definitions. These definitions make clear that the consent order applies to the directors, officers, employees, agents and representatives of Dell. The order also defines the terms VL-bus, VESA, and "designated representative," which means the person appointed by Dell to the standard-setting organization who communicates Dell's position regarding its patent rights related to any standard under consideration by the standard-setting organization.

Part II of the order requires Dell to cease and desist from all enforcement efforts where it has asserted that any person or entity, by using or applying VL-bus in its manufacture of computer equipment, has infringed Dell's '481 patent.

Part III of the order prohibits Dell from undertaking any new efforts to enforce the '481 patent in which Dell would claim that any person or entity, by using or applying VL-bus in its manufacture of computer equipment, has infringed the '481 patent.

Part IV of the order requires that for a period of ten (10) years after the date the order becomes final, Dell shall cease and desist from enforcing or threatening to enforce any patent rights by asserting or alleging that any person's or entity's use or implementation of an industry design standard infringes such patent rights if, in response to a written inquiry from the standard-setting organization to respondent's designated representative, Dell intentionally failed to disclose such patent rights while such industry standard was under consideration.

Part V of the order requires that for a period of ten (10) years after this order becomes final, Dell shall maintain the procedure for assuring compliance with Paragraph IV of the order consistent with a compliance procedure Dell has submitted to the Commission.

Part VI of the order requires Dell to distribute a copy of this order, complaint and an announcement to VESA, to those members of VESA that Dell contacted regarding possible infringement of the '481 patent, and to other persons respondent has sent notice regarding the '481 patent claim.

Part VI also requires that Dell distribute a copy of this order, complaint and the

announcement to new officers and directors of Dell; to every employee of Dell whose responsibilities include acting as Dell's designated representative to any standard-setting organization, group or similar body of which respondent is a member; and to each standard-setting organization of which Dell is a member. Dell must also identify to each standard-setting organization it joins the name of the person who will serve as its designated representative to the standard-setting organization.

Part VII requires Dell to file compliance reports for five years.

Donald S. Clark,  
Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in Deli Computer Corp.

[File No. 931-0097]

Today, the Commission accepts for public comment a consent order that prohibits Dell Computer Corp. ("Dell") from attempting to enforce its "'481 patent" against anyone "using or applying VL-bus in its manufacture of computer equipment," because Dell failed to warn the Video Electronics Standards Association ("VESA") of Dell's intellectual property rights when VESA adopted its computer local bus design standard ("VL-bus"). Because the complain does not allege and the evidence does not support a violation of Section 5 of the FTC Act under any established theory of law, and because under any novel theory the competitive implications of the conduct alleged remain unclear, I dissent.

VESA is a private standard-setting association, the members of which include both computer hardware and software manufacturers. In early 1992, a VESA committee developed a proposed standard for a computer bus to carry information between the central processing unit and the peripheral devices of a computer. In August 1992, VESA members, including Dell, voted to approve the proposed standard. The trade association's ballot required each member's authorized representative to VESA to sign a statement that "to the best of my knowledge," the proposal did not infringe the member company's intellectual property rights. Dell subsequently asserted that implementation of the VL-bus by others infringed Dell's patent rights.

One antitrust theory might be that Dell intentionally mislead VESA regarding the scope of its patent rights; that VESA, relying on Dell's misrepresentations, adopted a standard that conflicted with Dell's rights; and that as a result of the standard, Dell acquired market power. No evidence supports a finding of such intentional conduct, and the allegations in the complaint do not seem sufficient to support a finding of liability on the basis of this theory. I welcome comment on the factual showing that would be necessary and appropriate under this theory.

Another Section 5 theory might be that by participating in a private trade association's standard-setting activities, a firm assumes an affirmative duty to identify the boundaries of its intellectual property rights and to warn the association of any potential conflicts. Alternatively, the Commission might impose

such a duty only if a firm returns a ballot with a certification like VESA's, so that a firm could escape antitrust exposure by simply not voting.

Adoption of this novel theory of liability may affect a range of standard-setting organizations. In creating a new antitrust-based duty of care for participants in the voluntary standard setting process, a host of questions need to be resolved. I welcome public comment on the appropriate nature and scope of any such duty, and I look forward to reassessing the case at the end of the comment period.

[FR Doc. 95-28459 Filed 11-21-95; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Advisory Committees; Notice of Meetings

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

FDA has established an Advisory Committee Information Hotline (the hotline) using a voice-mail telephone system. The hotline provides the public with access to the most current information on FDA advisory committee meetings. The advisory committee hotline, which will disseminate current information and information updates, can be accessed by dialing 1-800-741-8138 or 301-443-0572. Each advisory committee is assigned a 5-digit number. This 5-digit number will appear in each individual notice of meeting. The hotline will enable the public to obtain information about a particular advisory committee by using the committee's 5-digit number. Information in the hotline is preliminary and may change before a meeting is actually held. The hotline will be updated when such changes are made.

**MEETINGS:** The following advisory committee meetings are announced:

#### Vaccines and Related Biological Products Advisory Committee

*Date, time, and place.* December 5, 1995, 1:30 p.m., Food and Drug Administration, Bldg. 29, conference

room 121, 8800 Rockville Pike, Bethesda, MD.

*Type of meeting and contact person.* This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Closed committee deliberations, 1:30 p.m. to 4 p.m.; open public hearing, 4 p.m. to 5 p.m., unless public participation does not last that long; Nancy Cherry or Sandy Salins, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301-827-0314, or FDA Advisory Committee Information Hotline, 1-800-741-8138 (301-443-0572 in the Washington, DC area), Vaccines and Related Biological Products Advisory Committee, code 12388.

*General function of the committee.* The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

*Agenda—Open public hearing.* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person.

*Closed committee deliberations.* The committee will review trade secret and/or confidential commercial information relevant to current and pending products. This portion of the meeting will be closed to permit discussion of this information (5 USC 552b(c)(4)).

#### Radiological Devices Panel of the Medical Devices Advisory Committee

*Date, time, and place.* December 11, 1995, 8:30 a.m., Holiday Inn—Gaithersburg, Goshen Room, Two Montgomery Village Ave., Gaithersburg, MD. A limited number of overnight accommodations have been reserved at the hotel. Attendees requiring overnight accommodations may contact the hotel at 301-948-8900 and reference the FDA panel meeting block. Reservations will be confirmed at the group rate based on availability. Attendees with a disability requiring special accommodations should contact Gloria Williams, Sociometrics, Inc., 301-608-2151. The availability of appropriate accommodations cannot be assured unless prior written notification is received.

*Type of meeting and contact person.* Open public hearing, 8:30 a.m. to 9:45 a.m., unless public participation does not last that long; open committee