

1 MARK D. FOWLER (Bar No. 124235)
 mark.fowler@dlapiper.com
 2 DAVID ALBERTI (Bar. No. 220625)
 david.alberti@dlapiper.com
 3 CHRISTINE K. CORBETT (Bar No. 209128)
 christine.corbett@dlapiper.com
 4 YAKOV M. ZOLOTOREV (Bar No. 224260)
 yakov.zolotorev@dlapiper.com
 5 CARRIE L. WILLIAMSON (Bar No. 230873)
 carrie.williamson@dlapiper.com

**ORIGINAL
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MAR 26 2008

RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

6 DLA PIPER US LLP
 7 2000 University Avenue
 East Palo Alto, CA 94303-2215
 8 Tel: 650.833.2000
 Fax: 650.833.2001

9 Attorneys for Plaintiff,
 10 Sun Microsystems, Inc.

11 UNITED STATES DISTRICT COURT
 12 NORTHERN DISTRICT OF CALIFORNIA
 13 SAN FRANCISCO DIVISION

14 SUN MICROSYSTEMS, INC., a Delaware
 corporation,

15 Plaintiff,

16 v.

17 NETWORK APPLIANCE, INC., a
 18 Delaware corporation,

19 Defendant.

CV 08 CASE NO. 1641 EMC
 COMPLAINT FOR PATENT
 INFRINGEMENT

DEMAND FOR JURY TRIAL

20 Plaintiff Sun Microsystems, Inc. ("Sun") complains and alleges as follows against
 21 Defendant Network Appliance, Inc. ("NetApp"):

22 THE PARTIES AND THE NATURE OF THIS ACTION

23 1. Founded in 1982, Sun has a proven track record of 25 years of innovation. Sun's
 24 inventive technology, a result of the intelligence and creativity of its employees and Sun's
 25 substantial investment in research and development, is reflected by the over 6,000 United States
 26 patents now held by Sun. Sun is serious about innovation – matching words with deeds in
 27 investing approximately \$1.5 billion dollars in research and development during its last fiscal
 28 year alone. In contrast, reflecting its relative lack of innovation, on information and belief,

1 NetApp, a Sun competitor, spent only about a fourth as much on research and development
2 (approximately \$390 million during its last fiscal year) and holds only approximately 200 United
3 States patents. Indeed, rather than innovate, NetApp builds on the innovation of others. For
4 example, while, as alleged below, Sun develops breakthrough software and shares it with open
5 source communities, NetApp, on information and belief, uses extensive amounts of open source
6 code developed by others, without contributing any innovation of its own.

7 2. Sun provides network computing infrastructure solutions that include computer
8 systems, software, storage and services. Sun's core brands include the Java technology platform,
9 the Solaris operating system, StorageTek and the UltraSPARC processor. Sun's network
10 computing infrastructure solutions are used in a wide range of industries, including the technical
11 and scientific, business, engineering, telecommunications, financial services, manufacturing,
12 retail, government, life sciences, media and entertainment, transportation, energy and utilities, and
13 health care industries.

14 3. Sun is informed and believes and, on that basis alleges, that on or about January
15 28, 2008, NetApp acquired Onaro, Inc. ("Onaro"), including Onaro's storage service management
16 software.

17 4. As alleged below, NetApp's storage service management software, acquired
18 through Onaro, including but not limited to the Onaro SANscreen product suite and NAS Insight
19 software products and networks, storage devices and systems on which those software products
20 operate, uses Sun's innovative patented technology. Because NetApp uses Sun's patented
21 technology without a license to do so, NetApp is infringing Sun's patents, and Sun is entitled to
22 compensation from NetApp for its unauthorized use of Sun's technology, and to an injunction
23 against NetApp to halt its continued use of Sun's technology.

24 5. Sun is a Delaware corporation having its principal place of business at 4150
25 Network Circle, Santa Clara, California 95054.

26 6. Sun is informed and believes and thereon alleges that defendant NetApp is a
27 Delaware corporation having its principal place of business at 495 E. Java Drive, Sunnyvale,

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1 California 94089.

2 **JURISDICTION**

3 7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and
4 1367, in that this is a civil action involving claims arising under the law of the United States and
5 claims arising under the Patent and Trademark Act, 35 U.S.C. § 1 *et seq.*

6 8. This Court has personal jurisdiction over NetApp because it resides in, and
7 transacts business within, the State of California and the Northern District.

8 **VENUE**

9 9. Venue is proper in this district pursuant to 28 U.S.C. § 1400 because NetApp
10 resides in this district and because NetApp has committed acts of infringement in this district and
11 has a regular established place of business in this district. Venue also is proper in this district
12 pursuant to 28 U.S.C. § 1391 because the events or omissions which give rise to this action
13 occurred in this district and NetApp is a corporation that is subject to personal jurisdiction in
14 California and is deemed to reside in this district under § 1391(c).

15 **INTRADISTRICT ASSIGNMENT**

16 10. Sun and NetApp are currently involved in two lawsuits pending in the Northern
17 District of California, San Francisco division, before the Honorable Elizabeth D. Laporte and,
18 therefore, assignment to the San Francisco Division is proper and appropriate. Further, pursuant
19 to Local Rule 3-2(b) and (c), this action may be filed in and assigned to the San Francisco
20 Division as this action includes intellectual property claims and, therefore, may be assigned on a
21 district-wide basis.

22 **THE PATENTS**

23 11. On November 15, 2005, United States Patent No. 6,965,951 (the "'951 patent"),
24 entitled "Device centric discovery and configuration for fabric devices," was duly and legally
25 issued by the United States Patent and Trademark Office (the "USPTO") to Hyon T. Kim. Sun is
26 the owner of the entire right, title and interest in and to the '951 patent. A true and correct copy
27 of the '951 patent is attached hereto as Exhibit A.

1 12. On November 21, 2000, United States Patent No. 6,151,683 (the "'683 patent"),
2 entitled "Rebuilding computer states remotely," was duly and legally issued by the USPTO to
3 Michael J. Wookey. Sun is the owner of the entire right, title and interest in and to the '683
4 patent. A true and correct copy of the '683 patent is attached hereto as Exhibit B.

5 13. On January 30, 2001, United States Patent No. 6,182,249 (the "'249 patent"),
6 entitled "Remote alert monitoring and trend analysis," was duly and legally issued by the USPTO
7 to Michael J. Wookey and Kevin L. Chu. Sun is the owner of the entire right, title and interest in
8 and to the '249 patent. A true and correct copy of the '249 patent is attached hereto as Exhibit C.

9 14. On November 19, 2002, United States Patent No. 6,484,200 (the "'200 patent"),
10 entitled "Distinguished name scoping system for event filtering," was duly and legally issued by
11 the USPTO to Rajeev Angal, Shivaram Bhat, Michael Roytman and Subodh Bapat. Sun is the
12 owner of the entire right, title and interest in and to the '200 patent. A true and correct copy of
13 the '200 patent is attached hereto as Exhibit D.

14 **FIRST CLAIM FOR RELIEF**
15 **(Infringement of the '951 Patent)**

16 15. Sun incorporates and realleges paragraphs 1 through 14 of these claims for relief.

17 16. Sun is informed and believes, and on that basis alleges, that NetApp is infringing
18 the '951 patent by making, using, offering for sale, and/or selling within the United States devices
19 that embody the inventions disclosed and claimed in the '951 patent, and/or by importing into the
20 United States devices that embody the inventions disclosed and claimed in said patent. On
21 information and belief, NetApp has been and is currently infringing one or more claims of the
22 '951 patent, directly or indirectly, pursuant to 35 U.S.C. §271, in connection with certain of its
23 products, services, methods and/or systems, including without limitation the Onaro SANscreen
24 product suite and NAS Insight software products and networks, storage devices and systems on
25 which those software products operate.

26 17. In addition to direct infringement, Sun is informed and believes, and on that basis
27 alleges, that NetApp has induced and contributed to infringement by others of the '951 patent.

1 18. Based upon information and belief, NetApp has notice that it is infringing the '951
2 patent. Despite such notice, NetApp has continued to willfully infringe said patent by making,
3 using, offering to sell, and/or selling within the United States products that embody the inventions
4 disclosed and claimed in said patent, and/or by importing such products into the United States.

5 19. Sun has been irreparably harmed by NetApp's acts of infringement, and will
6 continue to be harmed unless and until NetApp's acts of infringement are enjoined and restrained
7 by order of this Court. Sun has no adequate remedy at law and is entitled to a preliminary and
8 permanent injunction against NetApp and its infringing products.

9 20. As a result of NetApp's acts of infringement, Sun has suffered and will continue to
10 suffer damages in an amount to be proven at trial.

11 21. This case is an "exceptional" case within the meaning of 35 U.S.C. § 285 and Sun
12 is entitled to an award of attorneys' fees.

13 **SECOND CLAIM FOR RELIEF**
14 **(Infringement of the '683 Patent)**

15 22. Sun incorporates and realleges paragraphs 1 through 14 of these claims for relief.

16 23. Sun is informed and believes, and on that basis alleges, that NetApp is infringing
17 the '683 patent by making, using, offering for sale, and/or selling within the United States devices
18 that embody the inventions disclosed and claimed in the '683 patent, and/or by importing into the
19 United States devices that embody the inventions disclosed and claimed in said patent. On
20 information and belief, NetApp has been and is currently infringing one or more claims of the
21 '683 patent, directly or indirectly, pursuant to 35 U.S.C. §271, in connection with certain of its
22 products, services, methods and/or systems, including without limitation including without
23 limitation the Onaro SANscreen product suite and NAS Insight software products and networks,
24 storage devices and systems on which those software products operate.

25 24. In addition to direct infringement, Sun is informed and believes, and on that basis
26 alleges, that NetApp has induced and contributed to infringement by others of the '683 patent.

27 25. Based upon information and belief, NetApp has notice that it is infringing the '683
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1 patent. Despite such notice, NetApp has continued to willfully infringe said patent by making,
2 using, offering to sell, and/or selling within the United States products that embody the inventions
3 disclosed and claimed in said patent, and/or by importing such products into the United States.

4 26. Sun has been irreparably harmed by NetApp's acts of infringement, and will
5 continue to be harmed unless and until NetApp's acts of infringement are enjoined and restrained
6 by order of this Court. Sun has no adequate remedy at law and is entitled to a preliminary and
7 permanent injunction against NetApp and its infringing products.

8 27. As a result of NetApp's acts of infringement, Sun has suffered and will continue to
9 suffer damages in an amount to be proven at trial.

10 28. This case is an "exceptional" case within the meaning of 35 U.S.C. § 285 and Sun
11 is entitled to an award of attorneys' fees.

12 **THIRD CLAIM FOR RELIEF**
13 **(Infringement of the '249 Patent)**

14 29. Sun incorporates and realleges paragraphs 1 through 14 of these claims for relief.

15 30. Sun is informed and believes, and on that basis alleges, that NetApp is infringing
16 the '249 patent by making, using, offering for sale, and/or selling within the United States devices
17 that embody the inventions disclosed and claimed in the '249 patent, and/or by importing into the
18 United States devices that embody the inventions disclosed and claimed in said patent. On
19 information and belief, NetApp has been and is currently infringing one or more claims of the
20 '249 patent, directly or indirectly, pursuant to 35 U.S.C. §271, in connection with certain of its
21 products, services, methods and/or systems, including without limitation the Onaro SANscreen
22 product suite and NAS Insight software products and networks, storage devices and systems on
23 which those software products operate.

24 31. In addition to direct infringement, Sun is informed and believes, and on that basis
25 alleges, that NetApp has induced and contributed to infringement by others of the '249 patent.

26 32. Based upon information and belief, NetApp has notice that it is infringing the '249
27 patent. Despite such notice, NetApp has continued to willfully infringe said patent by making,

1 using, offering to sell, and/or selling within the United States products that embody the inventions
2 disclosed and claimed in said patent, and/or by importing such products into the United States.

3 33. Sun has been irreparably harmed by NetApp's acts of infringement, and will
4 continue to be harmed unless and until NetApp's acts of infringement are enjoined and restrained
5 by order of this Court. Sun has no adequate remedy at law and is entitled to a preliminary and
6 permanent injunction against NetApp and its infringing products.

7 34. As a result of NetApp's acts of infringement, Sun has suffered and will continue to
8 suffer damages in an amount to be proven at trial.

9 35. This case is an "exceptional" case within the meaning of 35 U.S.C. § 285 and Sun
10 is entitled to an award of attorneys' fees.

11 **FOURTH CLAIM FOR RELIEF**
12 **(Infringement of the '200 Patent)**

13 36. Sun incorporates and realleges paragraphs 1 through 14 of these claims for relief.

14 37. Sun is informed and believes, and on that basis alleges, that NetApp is infringing
15 the '200 patent by making, using, offering for sale, and/or selling within the United States devices
16 that embody the inventions disclosed and claimed in the '200 patent, and/or by importing into the
17 United States devices that embody the inventions disclosed and claimed in said patent. On
18 information and belief, NetApp has been and is currently infringing one or more claims of the
19 '200 patent, directly or indirectly, pursuant to 35 U.S.C. §271, in connection with certain of its
20 products, services, methods and/or systems, including without limitation the Onaro SANscreen
21 product suite and NAS Insight software products and networks, storage devices and systems on
22 which those software products operate.

23 38. In addition to direct infringement, Sun is informed and believes, and on that basis
24 alleges, that NetApp has induced and contributed to infringement by others of the '200 patent.

25 39. Based upon information and belief, NetApp has notice that it is infringing the '200
26 patent. Despite such notice, NetApp has continued to willfully infringe said patent by making,
27 using, offering to sell, and/or selling within the United States products that embody the inventions

1 disclosed and claimed in said patent, and/or by importing such products into the United States.

2 40. Sun has been irreparably harmed by NetApp's acts of infringement, and will
3 continue to be harmed unless and until NetApp's acts of infringement are enjoined and restrained
4 by order of this Court. Sun has no adequate remedy at law and is entitled to a preliminary and
5 permanent injunction against NetApp and its infringing products.

6 41. As a result of NetApp's acts of infringement, Sun has suffered and will continue to
7 suffer damages in an amount to be proven at trial.

8 42. This case is an "exceptional" case within the meaning of 35 U.S.C. § 285 and Sun
9 is entitled to an award of attorneys' fees.

10 **PRAYER**

11 WHEREFORE: Sun prays for judgment against NetApp as follows:

12 1. A judgment that NetApp has infringed, induced others to infringe, and/or
13 committed acts of contributory infringement with respect to the claims of each of the Sun Patents-
14 in-Suit;

15 2. A judgment that NetApp's patent infringement has been, and continues to be,
16 willful and deliberate;

17 3. An order preliminarily and permanently enjoining NetApp and its subsidiaries,
18 officers, agents, servants, employees, licensees and all other persons acting or attempting to act in
19 active concert or participation with it or acting on its behalf, from further infringement,
20 inducement or infringement, or contributory infringement of each of the Sun Patents-in-Suit;

21 4. An order directing NetApp to account for and pay to Sun all damages caused to
22 Sun by reason of NetApp's patent infringement, pursuant to 35 U.S.C. § 284, including increased
23 damages under 35 U.S.C. § 284;

24 5. An order directing NetApp to pay Sun's costs, expenses and reasonable attorneys'
25 fees pursuant to 35 U.S.C. § 285;

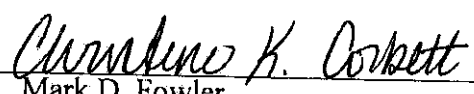
26 6. An award of pre-judgment and post-judgment interest on the damages caused to
27 Sun by NetApp;

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- 7. For the costs incurred by Sun in bringing this suit; and
- 8. For other and further legal and/or equitable relief as the Court deems just and proper.

Dated: March 26, 2008

DLA PIPER US LLP



Mark D. Fowler
David Alberti
Christine K. Corbett
Yakov M. Zolotorev
Carrie L. Williamson
Attorneys for Plaintiff
SUN MICROSYSTEMS, INC.

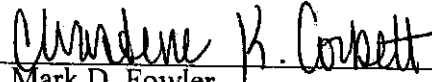
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DEMAND FOR JURY TRIAL

Sun demands trial by jury for all so triable pursuant to Fed. R. Civ. Pro. 38(b) and Civil L.R. 3-6(a).

Dated: March 26, 2008

DLA PIPER US LLP



Mark D. Fowler
David Alberti
Christine K. Corbett
Yakov M. Zolotorev
Carrie L. Williamson
Attorneys for Plaintiff
SUN MICROSYSTEMS, INC.