

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TMI SOLUTIONS LLC,

Plaintiff,

v.

H&M GROUP, LLC,

Defendant.

Case No.

PATENT CASE

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff TMI Solutions LLC (“Plaintiff”) filed this Complaint against H&M Group, LLC (“Defendant”) for infringement of U.S. Patent No. 9,484,077 (“the ’077 patent”) and U.S. Patent No. 9,484,078 (“the ’078 patent”) (collectively “the patents-in-suit” or “asserted patents”).

THE PARTIES

1. Plaintiff is a Michigan limited liability company with its principal place of business located at 836 Diamond Street, Laguna Beach, California 92651.

2. Defendant is a Delaware corporation with its principal place of business located at 300 Lightning Way, Secaucus, New Jersey 07094. Defendant can be served with process through its registered agent at Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

JURISDICTION AND VENUE

3. Plaintiff brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1400(b). The Defendant is a Delaware Corporation.

5. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process, as the Defendant is a Delaware Corporation.

THE PATENTS-IN-SUIT

6. The '077 patent lawfully issued on November 1, 2016, and stems from Application No. 12/893,112, filed on September 29, 2010. The '077 patent is entitled "Providing Services from a Remote Computer System to a User Station Over a Communications Network." A copy of the '077 patent is attached hereto as Exhibit 1.

7. The '078 patent lawfully issued on November 1, 2016, and stems from Application No. 12/893,259, filed on September 29, 2010. The '078 patent is entitled "Providing Services from a Remote Computer System to a User Station Over a Communications Network." A copy of the '078 patent is attached hereto as Exhibit 2.

8. The named inventor on the patents-in-suit Richard R. Reisman.

9. The patents-in-suit all claim priority to Application No. 08/251,724, filed on May 31, 1994, not U.S. Patent No. 5,694,546.

10. The technologies claimed by the patents-in-suit consist of ordered combinations of features and functions that were not, alone or in combination, considered well-understood by, and routine, generic, and conventional to, skilled artisans in the industry at the time of invention.

11. Each asserted claim in the patents-in-suit is presumed valid.

12. Each asserted claim in the patents-in-suit is directed to patent eligible subject matter under 35 U.S.C. § 101.

13. The patent specifications of the patents-in-suit disclose shortcomings in the prior art and then explain, in detail, the technical ways that the patents resolve or overcome those shortcomings. *See, e.g.*, Exhibit 1, '077 patent, 1:17-5:34; Exhibit 2, '078 patent, 1:20-5:42.

14. The patents-in-suit each have over 1,800 forward citations, which is indicative of the value and importance of the inventions claimed in the patents-in-suit.

15. The patents-in-suit are, at least in part, directed to the unique problem of how to automatically identify users, and user stations, in the context of computer networks. *See e.g.*, '077 patent, 5:19-22, 1:30-33, 7:50-57.

16. At the time of the invention of claim 6 of the '077 patent and claims 1 and 2 of the '078 patent this was a well-recognized problem to which there was no solution. *See e.g.*, Exhibit 3, <http://www.nytimes.com/2001/09/04/business/giving-web-a-memory-cost-its-users-privacy.html> (noting that in May 1994 “every visit to a site was like the first, with no automatic way to record that a visitor had dropped by before” and “any commercial transaction would have to be handled from start to finish in one visit, and visitors would have to work their way through the same clicks again and again; it was like visiting a store where the shopkeeper had amnesia”).

17. On September 28, 2018, the United States District Court for the District of Delaware issued a Memorandum Opinion and Order in Case Nos. 17-965 (ECF 29); 17-966 (ECF 33); 17-697 (ECF 34); 17-968 (ECF 30); 17-969 (ECF 33), denying defendants' motions to dismiss pursuant to 35 U.S.C. § 101 and finding that, among other things, “Defendants have not sufficiently persuaded the Court that the claim limitations were well-understood, routine, and conventional computer technology at the time of the invention.” *See* Case Nos. 17-965 (ECF 29); 17-966 (ECF 33); 17-697 (ECF 34); 17-968 (ECF 30); 17-969 (ECF 33).

18. Further, in its Memorandum Opinion and Order the Court held that “The complaint adequately and plausibly alleges that the claims capture a non-routine, unconventional, and not well-understood activity, and may improve the functioning of computers.” *Id.*

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 9,484,077)

19. Plaintiff incorporates paragraphs 1 through 18 herein by reference.

20. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

21. Plaintiff is the owner of the '077 patent, entitled “Providing Services from a Remote Computer System to a User Station over a Computer Network” with all substantial rights to the '077 patent including the right to enforce, sue, and recover damages for past infringement. A copy of the '077 patent is attached as Exhibit 1.

22. The '077 patent is valid, enforceable and was duly issued in fully compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

23. Defendant has infringed one or more claims of the '077 patent in this judicial district and elsewhere in Delaware and the United States.

24. In particular, Defendant has infringed at least claim 6 of the '077 patent by, among other things, practicing and/or using hardware that practices the computer implemented method as set forth in claim 6 via Defendant’s use of cookies in conjunction with its website. Evidence of Defendant’s infringement is set forth in the claim chart attached hereto as Exhibit 4.

25. Defendant is liable for these infringements of the '077 patent pursuant to 35 U.S.C. § 271.

26. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 9,484,078)

27. Plaintiff incorporates paragraphs 1 through 26 herein by reference.

28. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

29. Plaintiff is the owner of the '078 patent, entitled "Providing Services from a Remote Computer System to a User Station over a Computer Network" with all substantial rights to the '078 patent including the right to enforce, sue, and recover damages for past infringement. A copy of the '078 patent is attached as Exhibit 2.

30. The '078 patent is valid, enforceable and was duly issued in fully compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

31. Defendant has directly infringed one or more claims of the '078 patent in this judicial district and elsewhere in Delaware and the United States.

32. In particular, Defendant has infringed at least claims 1 and 2 of the '078 patent by, among other things, practicing and/or using hardware that practices the computer implemented method as set forth in claims 1 and 2 via Defendant's use of cookies in conjunction with its website. Evidence of Defendant's infringement is set forth in the claim chart attached hereto as Exhibit 5.

33. Defendant is liable for these infringements of the '078 patent pursuant to 35 U.S.C. § 271.

34. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Plaintiff requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff asks that the Court find in its favor and against Defendant and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the '077 patent and/or the '078 patent have been infringed, either literally and/or under the doctrine of equivalents by Defendant;
- b. Judgment that Defendant account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;
- c. Judgment that Defendant account for and pay to Plaintiff a reasonable royalty because of Defendant's infringing activities;
- d. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein; and
- e. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: June 28, 2019

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