

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

INNOVATIVE AUTOMATION LLC,

Plaintiff,

v.

BARNES & NOBLE, INC.;
BARNES & NOBLE COLLEGE
BOOKSELLERS, LLC;
NOOK MEDIA LLC; and
MICROSOFT CORPORATION;

Defendants.

Case No. 6:13-cv-462

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Innovative Automation LLC states its Complaint against defendants Barnes & Noble, Inc., Barnes & Noble College Booksellers, LLC, Nook Media LLC, and Microsoft Corporation and alleges as follows:

THE PARTIES

1. Plaintiff Innovative Automation LLC is a limited liability company organized and existing under the laws of the State of California, with its principal place of business at 606 North First Street, San Jose, California 95112.

2. Defendant Barnes & Noble, Inc. is a corporation organized and existing under the laws of Delaware, with its principal place of business at 122 Fifth Avenue, New York, New York 10011. On information and belief, Defendant Barnes & Noble College Booksellers, LLC is a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 120 Mountain View Blvd., Basking Ridge, NJ, 07920. Defendants Barnes & Noble, Inc. and Barnes & Noble College Booksellers, LLC are referred to herein collectively as “the Barnes & Noble Defendants.”

3. On information and belief, Defendant Nook Media LLC is a limited liability company organized and existing under the laws of Delaware, with its principal place of business at 76 9th Avenue Floor 9, New York, NY, 10011. Defendant Nook Media LLC is a joint venture between Defendants Barnes & Noble and Microsoft Corporation to expand the distribution of the Nook content distribution product and service. A true and correct copy of a October 4, 2012 Press Release from Defendant Barnes & Noble, Inc. and Defendant Microsoft Corporation announcing the partnership is attached hereto as Exhibit C.

4. Defendant Microsoft Corporation is a corporation organized and existing under the laws of Washington, with its principal place of business at One Microsoft Way, Redmond, Washington 98052.

JURISDICTION AND VENUE

5. Plaintiff realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

6. This action is for patent infringement pursuant to the patent laws of the United States, 35 U.S.C. § 1, *et seq.* This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. Personal jurisdiction exists generally over Defendants because they have sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within the Eastern District of Texas. Personal jurisdiction also exists specifically over Defendants because they, directly or through subsidiaries or intermediaries, make, use, offer for sale, sell, import, advertise, make available and/or market one or more products and/or services within the State of Texas, and more particularly, within the Eastern District of Texas, that infringe the patents-in-suit, as described more particularly below.

8. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b), because Defendants have committed acts of infringement in the Eastern District of Texas and have transacted business in the Eastern District of Texas.

COUNT ONE
INFRINGEMENT OF U.S. PATENT NO. 7,174,362 C1

9. Plaintiff realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

10. Plaintiff is the owner of all right, title, and interest in United States Patent No. 7,174,362 C1, entitled “Method and System for Supplying Products from Pre-Stored Digital Data in Response to Demands Transmitted via Computer Network,” duly and legally issued by the United States Patent and Trademark Office on February 6, 2007 (the “’362 patent”). A true and correct copy of the ’362 patent is attached hereto as Exhibit A.

11. The ’362 patent generally describes and claims a computer-implemented method of digital data duplication. In the method of claim 1 of the ’362 patent, a request is taken at one or more user interfaces and is transmitted through a network to a computer. The computer contains a module to create a task log based on incoming requests; a module for storing the necessary data; and a module to create a subset of the data, download that subset to an output device, and command the device to transfer the subset onto blank media. The request is assigned to an output device, and the duplication process is executed. Claims 2-26 of the ’362 patent describe various other methods and systems of digital data duplication.

12. The Barnes & Noble Defendants, Microsoft Corporation, and Nook Media LLC have jointly infringed and continue to jointly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’362 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention. Specifically, the Barnes & Noble Defendants and Microsoft Corporation formed Nook Media LLC as a joint venture in order to make, use, offer to sell, sell, and/or import into the United States: (i) the Nook content distribution product and service, accessible through at least www.barnesandnoble.com; (ii) Nook e-reader devices; and (iii) Nook software applications for mobile devices and personal computers (collectively, the “Accused Nook Instrumentalities”). In order to accomplish these infringing activities, on information and belief, the Barnes & Noble Defendants and Microsoft Corporation, through or in concert with Nook Media LLC, exchanged

documentation, instructions, and software tools that enabled the development and testing of the Accused Nook Instrumentalities, particularly to ensure that they are compatible with and operate on the Microsoft Windows 8 operating system. Moreover, on information and belief, the Barnes & Noble Defendants have contracted with Microsoft Corporation to distribute the infringing Nook software applications. In addition, at least during the period prior to the formation of Nook Media LLC, each of the Barnes & Noble Defendants infringed one or more claims of the '362 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the Accused Nook Instrumentalities.

13. In addition to its infringement described in the prior paragraph, Microsoft Corporation has also infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '362 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the following products and services: (i) the Xbox Game Store product and service; (ii) the Xbox Movie product and service; and (iii) the Xbox Music product and service. These products and services are accessible by consumers through at least Xbox 360 consoles, marketplace.xbox.com, and mobile device and desktop applications.

14. As a result of Defendants' infringing activities with respect to the '362 patent, Plaintiff has suffered damages in an amount not yet ascertained. Plaintiff is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial, but in no event less than reasonable royalties, together with interest and costs. Defendants' infringement of Plaintiff's exclusive rights under the '362 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT TWO
INFRINGEMENT OF U.S. PATENT NO. 7,392,283

15. Plaintiff realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

16. Plaintiff is the owner of all right, title, and interest in United States Patent No. 7,392,283, entitled “Method and System for Supplying Products from Pre-Stored Digital Data in Response to Demands Transmitted Via Computer Network,” duly and legally issued by the United States Patent and Trademark Office on June 24, 2008 (the “’283 patent”). A true and correct copy of the ’283 patent is attached hereto as Exhibit B.

17. The ’283 patent generally describes and claims a computer-implemented method of digital data duplication. In the method of claim 1 of the ’283 patent, a request is taken at one or more user interfaces and is transmitted through a network to a computer. The computer contains a module to create a task log based on incoming requests; a module for providing data to be duplicated; and a module to retrieve data for duplication, download the data to an output device, and command the output device to transfer the data onto media. Claims 2-14 of the ’283 patent describe various other methods and systems of digital data duplication.

18. The Barnes & Noble Defendants, Microsoft Corporation, and Nook Media LLC have jointly infringed and continue to jointly infringe, literally and/or under the doctrine of equivalents, one or more claims of the ’283 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention. Specifically, the Barnes & Noble Defendants and Microsoft Corporation formed Nook Media LLC as a joint venture in order to make, use, offer to sell, sell, and/or import into the United States: (i) the Nook content distribution product and service, accessible through at least www.barnesandnoble.com; (ii) Nook e-reader devices; and (iii) Nook software applications for mobile devices and personal computers (collectively, the “Accused Nook Instrumentalities”). In order to accomplish these infringing activities, on information and belief, the Barnes & Noble Defendants and Microsoft Corporation, through or in concert with Nook Media LLC, exchanged documentation, instructions, and software tools that enabled the development and testing of the Accused Nook Instrumentalities, particularly to ensure that they are compatible with and operate on the Microsoft Windows 8 operating system. Moreover, on information and belief, the Barnes & Noble Defendants have contracted with Microsoft Corporation to distribute the infringing

Nook software applications. In addition, at least during the period prior to the formation of Nook Media LLC, each of the Barnes & Noble Defendants infringed one or more claims of the '283 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the Accused Nook Instrumentalities.

19. In addition to its infringement described in the prior paragraph, Microsoft Corporation has also infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '283 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the following products and services: (i) the Xbox Game Store product and service; (ii) the Xbox Movie product and service; and (iii) the Xbox Music product and service. These products and services are accessible by consumers through at least Xbox 360 consoles, marketplace.xbox.com, and mobile device and desktop applications.

20. As a result of Defendants' infringing activities with respect to the '283 patent, Plaintiff has suffered damages in an amount not yet ascertained. Plaintiff is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial, but in no event less than reasonable royalties, together with interest and costs. Defendants' infringement of Plaintiff's exclusive rights under the '283 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

Plaintiff requests entry of judgment in its favor against Defendants for the following:

- a) A declaration that Defendants have infringed one or more claims of the '362 patent and the '283 patent;
- b) An award of damages adequate to compensate Plaintiff for Defendants' infringement of the '362 patent and the '283 patent, but in no event less than a reasonable royalty, together with prejudgment and post-judgment interest and costs, in an amount according to proof;

c) An entry of a permanent injunction enjoining Defendants, and their respective officers, agents, employees, and those acting in privity with it, from further infringement of the '362 patent and the '283 patent, or in the alternative, awarding a royalty for post-judgment infringement; and

d) An award to Plaintiff of such other costs and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury.

Dated: June 4, 2013

Respectfully submitted,

/s/ Charles Ainsworth

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