

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

SimpleAir, Inc., a Texas corporation,

Plaintiff,

vs.

Google Inc., a Delaware corporation; and
YouTube LLC, a Delaware limited liability
company,

Defendants.

Civil Action No. 2:14-cv-000111-JRG

Jury Demanded

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff SimpleAir sues Defendants Google and YouTube and on information and belief alleges as follows:

Introduction

1. Plaintiff SimpleAir owns the inventions described and claimed in U.S. Patent No. 8,601,154 (the ‘154 patent), entitled “System and Method for Transmission of Data.” Defendant Google has infringed this patent by making and using the methods claimed by the patent by developing, offering, operating, using, and putting into service the Gmail, Google+, Google Talk, Google Hangouts, Google Calendar, and YouTube services, as used in connection with the Google Cloud Messaging (GCM) service, Android Cloud to Device Messaging (C2DM) service, and Google Cloud Messaging for Chrome services to send push notifications to Android smartphones and tablets and Chromebooks. Defendant YouTube has infringed the methods claimed by the ‘154 patent by developing, offering, operating, using, and putting into service the YouTube service. SimpleAir seeks damages for patent infringement.

Jurisdiction and Venue

2. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§271 and 281, *et seq.* The Court has original jurisdiction over this patent infringement action under 28 U.S.C. §1338(a).

3. Venue is proper in this Court because Defendants are responsible for acts of infringement occurring in the Eastern District of Texas as alleged in this Complaint, and have delivered or caused to be delivered infringing services and software in the Eastern District of Texas. In addition, this Court has presided over prior matters relating to the asserted patent:

- *SimpleAir, Inc. v. AWS Convergence Technologies, Inc., et al.*, 2:09-cv-289-CE (E.D. Tex.), in which the Court entered a *Markman* order construing the claims of the parent patents of the '154 patent;
- *SimpleAir, Inc. v. Microsoft Corporation, et al.*, 2:11-cv-416 JRG (E.D. Tex.), in which the Court entered a *Markman* order construing the claims of the parent patents of the '154 patent.

Plaintiff SimpleAir

4. Plaintiff SimpleAir, Inc. ("SimpleAir") is a corporation existing under and by virtue of the laws of the State of Texas. SimpleAir is an inventor-owned technology licensing company with interests and intellectual property in the wireless content delivery, mobile application, and push notification market spaces. SimpleAir's patent portfolio is licensed by many leading technology companies.

The Patents

5. The United States Patent and Trademark Office issued the '154 patent on December 3, 2013. SimpleAir is the owner of all right, title, and interest in the patent, including all rights to pursue and collect damages for past infringements of the patent. A copy of the '154

patent is attached as Exhibit A.

Defendant Google

6. Defendant Google Inc. (“Google”) is a Delaware corporation with a principal place of business in Mountain View, California and various other offices and facilities of relevance located throughout the country.

Defendant YouTube

7. Defendant YouTube, LLC (“YouTube”) is a wholly-owned subsidiary of Google Inc. YouTube is a Delaware limited liability company with a principal place of business in San Bruno, California and various other offices and facilities of relevance located throughout the country.

First Claim for Patent Infringement (‘154 patent)

8. Plaintiff incorporates by reference each of the allegations in paragraphs 1-7 above and further alleges as follows:

9. On December 3, 2013, the United States Patent and Trademark Office issued U.S. Patent No. 8,601,154 (the ‘154 patent), entitled “System and Method for Transmission of Data.”

10. Plaintiff SimpleAir, Inc. is the owner of the ‘154 patent with full rights to pursue recovery of royalties or damages for infringement of said patent, including full rights to recover past and future damages.

11. Each claim of the ‘154 patent is valid and enforceable.

12. Defendant Google has directly infringed the claims of the ‘154 patent by making, using, operating, and putting into service the Gmail, Google+, Google Talk, Google Hangouts, Google Calendar, and YouTube services and systems, as used in connection with the Google Cloud Messaging (GCM) service, Android Cloud to Device Messaging (C2DM) service, and Google Cloud Messaging for Chrome services to send push notifications to Android smartphones

and tablets and Chromebooks.

13. Defendant Google's infringement of the '154 patent has been willful since at least January 18, 2014 and continues to be willful. Google knew of the '154 patent at least by January 8, 2014, has disregarded, and continues to disregard an objectively high likelihood that its actions infringe the '154 patent since at least January 18, 2014, when the jury returned a verdict of infringement and validity against Google in the pending *SimpleAir v. Google* matter. Google knew of the risk that its actions infringe the '154 patent or the risk is so obvious that Google should have known of it.

14. Defendant YouTube has directly infringed the claims of the '154 patent by making, using, operating, and putting into service the YouTube service and system, as used in connection with the Google Cloud Messaging (GCM) service, Android Cloud to Device Messaging (C2DM) service, and Google Cloud Messaging for Chrome services to send push notifications to Android smartphones and tablets and Chromebooks.

15. Plaintiff SimpleAir has been damaged by Defendants' infringement of the '154 patent.

16. Plaintiff SimpleAir demands trial by jury of all issues relating to this claim.

17. SimpleAir reserves the right to amend to assert a claim of willful infringement by YouTube if the evidence obtained in discovery supports such assertion.

WHEREFORE, Plaintiff prays for judgment as follows:

- A. Compensatory damages for Defendants' infringement of the '154 patent;
- B. An injunction preventing Defendants from further infringing the '154 patent;
- C. A declaration that Google's infringement is willful and that SimpleAir is entitled to enhanced damages, reasonable costs, and attorneys' fees;
- D. A declaration that this case is exceptional as to Google;

- E. Pre-judgment interest; and
- F. For such other relief as justice requires.

Date: February 13, 2014

Respectfully submitted,

By: /s/ Jeff Eichmann
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Certificate of Service

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all parties not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email, on this the 13th day of February 2014.

/s/ Jeff Eichmann