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

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CYBERFONE SYSTEMS, LLC,   :

                        :   C.A. No. _____

               Plaintiff,   :

                        :

          v.   :

                        :   **JURY TRIAL DEMANDED**

LEXMARK INTERNATIONAL, INC.,   :

                        :

            Defendant.   :

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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Cyberfone Systems, LLC ("CyberFone"), as for its complaint of patent infringement in this matter, hereby alleges as follows:

Nature of the Action

This is an action for patent infringement of United States Patent No. 6,044,382 (the "'382 Patent") under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*, seeking damages and injunctive and other relief under 35 U.S.C. § 281, *et seq.*

The Parties

1.   Plaintiff CyberFone is a Texas limited liability company with its principal place of business at 911 NW Loop 281, Suite 211-15, Longview, Texas 75605.

2. Upon information and belief, Defendant Lexmark International, Inc. ("Defendant" or "Lexmark") is a Delaware corporation with its principal place of business at 740 W. New Circle Rd., Lexington, Kentucky, 40550. Lexmark has appointed CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas, 75201 as its agent for service of process.

Jurisdiction and Venue

3. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action concerns the infringement of a United States patent.

5. Upon information and belief, Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due to at least its substantial business in this forum, directly and/or through intermediaries, including: (i) at least a portion of the infringements alleged herein, and (ii) regularly doing or soliciting business in the State of Texas and in this Judicial District, engaging in other persistent courses of conduct, maintaining continuous and systematic contacts in Texas and in this Judicial District, purposefully availing itself of the privileges of doing business in Texas and in this Judicial District, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this Judicial District. Upon information and belief, this Court also has personal jurisdiction over Defendant because it is a foreign entity registered to do business in the State of Texas, and thus it has purposely availed itself of the privileges and benefits of the laws of Texas.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other reasons, Defendant is subject to personal jurisdiction in this District, and Defendant has committed and continues to commit acts of patent infringement in this District.

For example, upon information and belief, Defendant has used, sold, offered for sale, and imported infringing products and services in this District.

The Patent-In-Suit

7.   CyberFone is the owner by assignment of the '382 Patent, entitled "Data Transaction Assembly Server," which the United States Patent & Trademark Office duly issued on March 28, 2000. A true and correct copy of the '382 Patent is attached hereto as Exhibit A.

8.   The inventions of the '382 Patent are applicable to, among other things, form-based data transaction processing.

9.   The '382 patent has already been the subject of over thirty licensing agreements, which generated over $15 million in licensing revenue.

Lexmark's Infringing Products and Methods

10.   Upon information and belief, Lexmark uses form-based data transaction processing platforms comprising a transaction entry device / transmission assembly server, a transmission medium and a server connected to the transaction entry device via the transmission medium, including by way of example, the Lexmark Genesis S815.

11.   Lexmark purports that its SmartSolutions applications allow users to "add customized one-touch solutions to [their] printer to streamline repetitive coping, scanning, and printing tasks." Lexmark further instructs users, "to access a solution . . . , touch SmartSolutions on the printer control panel, and then select the icon or name of the solution."[1]

COUNT I: INFRINGEMENT OF THE '382 PATENT

12.   Plaintiff incorporates paragraphs 1 through 11 herein by reference as if set forth here in full.

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[1] *See* https://smartsolutions.lexmark.com/content/help/en_US/Lexmark_SmartSolutions_User_ Guide.pdf.

13.   Upon information and belief, Defendant has been and is currently directly infringing, literally or under the doctrine of equivalents, one or more claims of the '382 Patent by making, using, offering to sell, and/or selling within the United States, and/or importing into the United States, without authority, the aforementioned form-based data processing platforms. For example, and without limitation, Defendant directly infringed and continues to directly infringe the '382 Patent in this Judicial District and elsewhere in the United States. Defendant's direct infringement includes, without limitation, (i) making and using the apparatus of at least claim 19, and (ii) practicing the method of at least claim 13.

14.   Defendant also directly infringes one or more claims of the '382 Patent by directing and/or controlling its employees, executives, users, agents, affiliates, suppliers and customers to use the aforementioned form-based data processing platforms within the United States.

15.   To the extent that claim 13, or any other method claim, is construed to require a method with a step not practiced by Lexmark, Lexmark would also directly infringe such claims at least because it directs and/or controls the practicing of all claim elements, as shown for example, and among other things, by Lexmark entering into contracts with its users, by Lexmark providing forms to such users on Lexmark devices, by Lexmark pre-loading the form-based operating platforms onto Lexmark devices, by Lexmark providing form-based operating platforms to users and by Lexmark instructing users on how to operate the form-based operating platforms.

16.   To the extent that claim 19, or any other apparatus claim, is construed to require a system involving a user other than Lexmark, Lexmark would also directly infringe such claims of the '382 Patent because it would put the system into use, as shown by, among other things,

Lexmark entering into contracts with its users, Lexmark providing forms to such users on Lexmark devices, Lexmark pre-loading the form-based operating platforms onto Lexmark devices, Lexmark providing form-based operating platforms to users and Lexmark instructing users on how to operate the form-based operating platforms.

17.   By using the methods claimed in the '382 Patent and by making, selling, importing, offering for sale and/or using the aforementioned form-based data processing platforms, Defendant has been and is now directly infringing under 35 U.S.C. § 271 one or more claims of the '382 Patent, either literally or under the doctrine of equivalents.

18.   Lexmark has been aware of the '382 Patent since at least the filing date of this complaint. Upon Lexmark's gaining knowledge of the '382 patent, it was, or became, apparent to Lexmark that the operation of its form-based operating platforms resulted in infringement of the '382 Patent. Upon information and belief, Lexmark has continued to engage in activities constituting inducement of infringement, notwithstanding its knowledge (or willful blindness thereto) that the activities it was inducing result in infringement of the '382 Patent.

19.   The direct infringement induced and contributed to by Lexmark includes at least the operation of the aforementioned Lexmark form-based operating platforms by end users acting alone or in combination with Lexmark. Lexmark knows that that these users are infringing the '382 Patent and Lexmark has specific intent to encourage these users to infringe the '382 Patent. Lexmark induces these users to operate Lexmark's form-based operating platforms, knowing that these acts constitute infringement of the '382 Patent and with specific intent to encourage those acts and encourage infringement.

20.   Lexmark encourages direct infringement of the '382 Patent at least by widely publicizing its products that comprise form-based operating platforms, by providing form-based

operating platforms to its users and customers, by processing information obtained via its form-based operating platforms, by interacting with users via form-based operating platforms and by instructing its users and customers how to use their form-based operating platforms.[2]

21.   Upon knowledge of the '382 Patent (at least since the filing date of this Complaint), Defendant is inducing infringement of the '382 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, users, agents and affiliates to make, use, sell and/or offer for sale Defendant's aforementioned form-based data processing platforms in a manner that constitutes infringement of one or more claims of the '382 Patent, knowing that such activities infringe the '382 Patent.

22.   To the extent that claim 13, or any other method claim, is construed to require a method with a step not practiced by Lexmark (and that, for example, Lexmark does not direct or control that user), Lexmark would induce infringement of the claim at least by actively encouraging its users to make, use, sell and/or offer for sale Defendant's aforementioned form-based data processing platforms in a manner that constitutes infringement of one or more claims of the '382 Patent, knowing that such use infringes one or more claims of the '382 Patent. Lexmark encourages direct infringement of the '382 Patent at least by widely publicizing its products that comprise form-based operating platforms, by providing form-based operating platforms to its users and customers, by processing information obtained via its form-based operating platforms, by interacting with users via form-based operating platforms and by instructing its users and customers how to use its form-based operating platforms.[3]

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[2] *See, e.g.*, https://smartsolutions.lexmark.com/content/help/en_US/Lexmark_SmartSolutions_ User_Guide.pdf (instructing users on how to update printer, using an updating process that infringes the '382 Patent).
[3] *Id.*

23.   To the extent that claim 19, or any other apparatus claim, is construed to require a system involving a user other than Lexmark (and that, for example, Lexmark does not direct or control that user), Lexmark would induce infringement of the claim at least by actively encouraging its users to make, use, sell and/or offer for sale Defendant's aforementioned form-based data processing platforms in a manner that constitutes infringement of one or more claims of the '382 Patent, knowing that such use infringes one or more claims of the '382 Patent. Lexmark encourages direct infringement of the '382 Patent, and encourage its users to place the platform into use, at least by widely publicizing its products that comprise form-based operating platforms, by providing form-based operating platforms to its users and customers, by processing information obtained via its form-based operating platforms, by interacting with users via form-based operating platforms and by instructing its users and customers how to use its form-based operating platforms.[4]

24.   By inducing its customers', suppliers', users', agents' and affiliates' use of the apparatus and methods claimed in the '382 Patent and their making and/or using the aforementioned form-based data processing platforms, Defendant has been and is now indirectly infringing under 35 U.S.C. § 271(b) one or more claims of the '382 Patent, either literally or under the doctrine of equivalents.

25.   Upon information and belief, upon knowledge of the '382 Patent (at least since the filing date of this Complaint) Defendant is contributing to the infringement of the '382 Patent by, among other things, knowingly and with intent, actively encouraging its customers, suppliers, agents, users and affiliates to make, use, sell and/or offer for sale Defendant's aforementioned form-based data processing platforms in a manner that constitutes infringement of one or more

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[4] *Id.*

claims of the '382 Patent. For example, to the extent that claim 19 is construed to require a system, such products would be for use in such system. Such products are not staple articles or commodities of commerce suitable for non-infringing use and are especially made for or adapted for use in infringing the '382 Patent. There are no substantial uses of the aforementioned form-based processing platforms that do not infringe one or more claims of the '382 Patent.

26.   By contributing to its customers', suppliers', agents', users' and affiliates' use of the apparatus and methods claimed in the '382 Patent and their making and/or using the aforementioned form-based data processing platforms, Defendant has been and is now indirectly infringing under 35 U.S.C. § 271(c) one or more claims of the '382 Patent, either literally or under the doctrine of equivalents.

27.   Lexmark is liable for infringement under 35 U.S.C. § 271(f) when the end user is outside the United States by supplying its software components for combination outside the United States.

28.   Alternatively, the actions alleged above establish joint infringement of at least claims 13 and 19 by Lexmark and its customers, users, suppliers, agents and affiliates for which they should be found jointly and severally liable.

29.   As a result of Defendant's unlawful infringement of the '382 Patent, CyberFone has suffered and will continue to suffer damage. CyberFone is entitled to recover from Defendant the damages adequate to compensate for such infringement, which have yet to be determined.

30.   Defendant will continue to infringe the '382 Patent unless and until it is enjoined by this Court.

31.   Defendant, by way of its infringing activities, has caused and continues to cause

CyberFone to suffer damages in an amount to be determined at trial. CyberFone has no adequate remedy at law against Defendant's acts of infringement and, unless Defendant is enjoined from its infringement of the '382 Patent, CyberFone will suffer irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, CyberFone respectfully requests that this Court enter judgment in its favor as follows:

A.   Holding that Defendant has directly infringed, literally and/or under the doctrine of equivalents, the claims of the '382 Patent;

B.   Holding that Defendant has indirectly infringed, literally and/or under the doctrine of equivalents, the claims of the '382 Patent;

C.   Holding that Defendant and its customers, users, suppliers, agents and affiliates have jointly infringed the claims of the '382 Patent;

D.   Permanently enjoining Defendant and its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents and all others acting in concert or privity with any of them from infringing, inducing the infringement of, or contributing to the infringement of the '382 Patent;

E.   Permanently enjoining the use of the form-based data processing platforms created using the patented methods of the '382 Patent;

F.   Awarding to CyberFone the damages to which it is entitled under 35 U.S.C. § 284 for Defendant's past infringement and any continuing or future infringement up until the date Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

G.   Declaring this to be an exceptional case and awarding CyberFone attorneys' fees under 35 U.S.C. § 285;

H.   Awarding CyberFone costs and expenses in this action;

I.   Awarding CyberFone pre- and post-judgment interest on its damages; and

J.   Awarding CyberFone such other and further relief in law or in equity as this Court deems just and proper.

<div align="center">**JURY DEMAND**</div>

CyberFone, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any and all issues so triable by right.

Dated: February 21, 2014   Respectfully submitted,

By: /s/Andrew W. Spangler
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