

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

EXECWARE, LLC,

Plaintiff,

v.

BJ'S WHOLESALE CLUB, INC.,

Defendant.

C.A. No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Execware, LLC files its Complaint for Patent Infringement against Defendant BJ's Wholesale Club, Inc., alleging, based on BJ's knowledge of its actions and the actions of others, and based on Execware's information and belief as to all other matters.

**PARTIES**

1. Execware, LLC is a limited liability company organized under the laws of the Commonwealth of Virginia, having its principal offices at 3440 South Jefferson Street #1125, Falls Church, Virginia 22041.

2. On information and belief, Defendant BJ's Wholesale Club, Inc. is a Massachusetts corporation with its corporate headquarters at 25 Research Drive, Westborough, Massachusetts 01581. BJ's Wholesale Club, Inc. can be served with process via its registered agent, C T Corporation System, 155 Federal Street, Suite 700, Boston, Massachusetts 02110.

**JURISDICTION AND VENUE**

3. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, 284, 285, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a).

4. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, BJ's receives service of process in this district, BJ's has transacted business in this district, and BJ's has directly and indirectly committed acts of patent infringement in this district.

5. BJ's is subject to this Court's specific and general personal jurisdiction under due process and the Delaware Long Arm Statute due at least to BJ's receiving service of process and substantial business in this district, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to individuals in Delaware.

**COUNT I**  
**INFRINGEMENT OF U.S. PATENT NO. 6,216,139**

6. On April 10, 2001, the United States Patent and Trademark Office ("PTO") duly and legally issued United States Patent No. 6,216,139 ("the 139 patent"), titled "Integrated Dialog Box for Rapidly Altering Presentation of Parametric Text Data Objects on a Computer Display," invented by Robert Listou.

7. Execware is the owner of the 139 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 139 patent against infringers, and to collect damages for all relevant times.

8. BJ's has notice of its infringement of the 139 patent at least from the filing and service dates of this Complaint.

9. BJ's, alone, or with one or more of its customers, suppliers, and distributors directly (literally and under the doctrine of equivalents) and indirectly infringed (under induced and contributory infringement) one or more claims of the 139 patent in this district and in the

United States by, among other ways, making, having made, selling, offering for sale, using, or importing products that format and reformat tabular displays of records, parameters, and text data objects under its <http://www.bjs.com/> website (hereinafter, “Accused Product”).<sup>1</sup>

10. BJ’s specifically intended to induce infringement of the 139 patent by taking active steps, directly or through contractual relationships with others, to cause its customers, suppliers, and distributors to make, use, sell, offer for sale, import, or otherwise provide the Accused Product in a manner that directly infringed one or more claims of the 139 patent. BJ’s specific intent is shown by, for example, its advertising, advising, consulting, instructing, guiding, or directing its customers, suppliers, and distributors how to make, use, sell, offer to sell, or import the Accused Product in a directly infringing manner. BJ’s has sufficiently detailed knowledge of the activities of its customers, suppliers, and distributors since at least the filing of this Complaint.

11. BJ’s specifically intended to contribute to the infringement of one or more claims of the 139 patent by designing or making software components of the Accused Product that are especially designed or made for use with computer systems and other mobile or static devices or systems in an infringing manner. To the extent BJ’s did not provide these computer systems and devices, it took active steps, directly or through contractual relationships, to cause direct infringement by its customers, suppliers, and distributors from its advertising, advising, consulting, instructing, guiding, or directing its customers, suppliers, and distributors how to integrate such computer systems and devices with the Accused Product. BJ’s had knowledge of its contributory infringement since at least the filing of this Complaint.

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<sup>1</sup> Execware accuses BJ’s of past, present, and future infringement of the 139 patent. All allegations of infringement or acts leading to infringement are made in the past tense, rather than also in the present and future tense, strictly for simplicity’s sake.

12. The Accused Product has hardware or software components that are especially designed and adapted for use with such other computer systems and devices in carrying out the formatting and reformatting tabular displays of records, parameters, and text data objects, as seen by how prominently these functions are promoted by BJ's on its website and in its marketing literature. These components in the Accused Product constitute a material part of the invention of one or more asserted claims of the 139 patent and are not staple articles of commerce suitable for substantial non-infringing uses. These distinct and separate components are used only to perform the formatting and reformatting functionality and not any other functionality.

13. Execware has been, is being, and will continue to be damaged by BJ's infringing conduct. BJ's is liable to Execware for damages in an amount that adequately compensates Execware for BJ's infringement. By law, this amount is no less than a reasonable royalty for BJ's and its customers', suppliers', and distributors' use of its Accused Product, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**JURY DEMAND**

Execware requests a jury trial for the claims asserted in this Complaint.

**PRAYER FOR RELIEF**

Execware requests this Court to find in its favor, against BJ's, and that this Court grant Execware the following relief.

a. Judgment that BJ's directly infringed of one or more claims of the 139 patent, either literally or under the doctrine of equivalents, or that BJ's, alone or in combination with others, indirectly infringed one or more claims of the 139 patent, either contributorily or by induced infringement;

b. A permanent injunction enjoining BJ's, its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting together with BJ's from directly infringing, contributorily infringing, or inducing infringement of the 139 patent;

c. Judgment that BJ's account for and pay to Execware all damages and costs that Execware incurred from BJ's direct or indirect infringing activities and conduct described in this Complaint;

d. Judgment that this Court grant Execware its pre- and post-judgment interest on its damages caused by BJ's directly and indirectly infringing activities and conduct described in this Complaint;

e. Judgment that this Court declare this an exceptional case and award Execware its reasonable attorneys' fees and costs under 35 U.S.C. § 285; and

f. Judgment that this Court grant all additional relief that this Court deems just and proper.

Dated: February 21, 2014

BAYARD, P.A.

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