

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

SOVERAIN SOFTWARE LLC,

Plaintiff,

v.

**WALGREEN CO., WALGREENS.COM,
INC., BEAUTY.COM, INC.,
DRUGSTORE.COM, INC., and VISION
DIRECT, INC.,**

Defendants.

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Civil Action No. 6:12-cv-153

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Soverain Software LLC, by its undersigned attorneys, for its complaint against Defendants Walgreen Co., Walgreens.com, Inc., Beauty.com, Inc., Drugstore.com, Inc., and Vision Direct, Inc. (collectively, “the Walgreen Defendants”) hereby allege the following:

INTRODUCTION

1. This is an action arising under the patent laws of the United States, Title 35 of the United States Code, for Walgreen Defendants’ infringement of U.S. Patent Nos. 5,715,314 and 5,909,492 (collectively, the “patents-in-suit”).

2. Plaintiff Soverain Software LLC (“Soverain”) is a Delaware limited liability company organized and existing under the laws of Delaware, with its principal place of business at 233 South Wacker Driver, Suite 9425, Chicago, IL 60606.

3. Upon information and belief, Defendant Walgreen Co. is a corporation organized and existing under the laws of the state of Illinois, with its principal place of business at 200 Wilmot Road, Deerfield, IL 60015.

4. Upon information and belief, Defendant Walgreens.com, Inc., a wholly-owned subsidiary of Defendant Walgreen Co., is a corporation organized and existing under the laws of the state of Illinois, with its principal place of business at 200 Wilmot Road, Deerfield, IL 60015.

5. Upon information and belief, Defendant Drugstore.com, Inc., a wholly-owned subsidiary of Defendant Walgreen Co., is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 411 108th Avenue NE, Suite 1400, Bellevue, WA 98004.

6. Upon information and belief, Defendant Beauty.com, Inc., a wholly-owned subsidiary of Defendant Drugstore.com, Inc., is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 411 108th Avenue NE, Suite 1400, Bellevue, WA 98004.

7. Upon information and belief, Defendant Vision Direct, Inc., a wholly-owned subsidiary of Defendant Drugstore.com, Inc., is a corporation organized and existing under the laws of the state of Texas, with its principal place of business at 411 108th Avenue NE, Suite 1400, Bellevue, WA 98004.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over the Walgreen Defendants because they have committed acts of infringement in violation of 35 U.S.C. § 271 and have placed infringing products into the stream of commerce, through an established distribution channel, with the knowledge and/or understanding that such products are used in this District. These acts cause injury to Soverain within the District. On information and belief, the Walgreen Defendants

derive substantial revenue from the infringing products used within the District, and/or expect or should reasonably expect its actions to have consequences within the District, and derive substantial revenue from interstate and international commerce.

10. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400(b). Moreover, Plaintiff Soverain has previously asserted the patents-in-suit in this Division, during which this Court issued several orders and opinions, conducted claim construction proceedings, and presided over trial. *See Soverain Software LLC v. Amazon.com, Inc. and The Gap, Inc.*, Case No. 6:04-cv-014 (filed Jan. 12, 2004); *Soverain Software LLC v. CDW Corp., et al.*, Case No. 6:07-cv-511 (filed Nov. 23, 2007); *Soverain Software LLC v. J.C. Penney Corp., Inc. et al.*, Case No. 6:09-cv-274 (filed Jun. 25, 2009).

11. The Walgreen Defendants are properly joined in this action because Beauty.com, Inc. and Vision Direct, Inc. are wholly-owned subsidiaries of Drugstore.com, Inc., which is a wholly-owned subsidiary of Walgreen Co. Walgreens.com, Inc. is also properly joined because it is a wholly-owned subsidiary of Walgreen Co. Upon information and belief, each of the Walgreen Defendants, along with and including Walgreen Co., maintains or operates its respective infringing website.

THE PATENTS-IN-SUIT

12. Plaintiff Soverain is the owner of all right, title, and interest in U.S. Patent No. 5,715,314 (the “’314 patent”) entitled “Network Sales System.” The ’314 patent was duly and properly issued by the United States Patent and Trademark Office on February 3, 1998 and assigned to Soverain. The PTO reexamined the ’314 patent and issued *Ex Parte* Reexamination Certificate No. 5,715,314 C1 on October 9, 2007. A copy of the ’314 patent is attached hereto as Exhibit A. A copy of the *Ex Parte* Reexamination Certificate 5,715,314 C1 is attached hereto as Exhibit B.

13. Plaintiff Soverain is the owner of all right, title, and interest in U.S. Patent No. 5,909,492 (the “’492 patent”) entitled “Network Sales System.” The ’492 patent was duly and properly issued by the United States Patent and Trademark Office on June 1, 1999 and assigned to Soverain. The PTO reexamined the ’492 patent and issued *Ex Parte* Reexamination Certificate No. 5,909,492 C1 on August 7, 2007. A copy of the ’492 patent is attached hereto as Exhibit C. A copy of the *Ex Parte* Reexamination Certificate No. 5,909,492 C1 is attached hereto as Exhibit D.

14. Plaintiff Soverain has marked its product with the numbers of one or more of the patents in suit.

COUNT I: PATENT INFRINGEMENT

15. Upon information and belief, the Walgreen Defendants , through their use of systems and methods related to shopping for and purchasing items through websites and network-based sales systems, including but not limited to www.walgreens.com, www.drugstore.com, www.beauty.com, and www.visiondirect.com, have infringed and continues to infringe, either literally or under the doctrine of equivalents, the ’314 and ’492 patents in violation of 35 U.S.C. §271 by: (a) making, using, offering for sale or selling within the United States, products or processes that practice inventions claimed in those patents.

16. Upon information and belief, the Walgreen Defendants, through their use of systems and methods related to shopping for and purchasing items through its websites and network-based sales systems, has infringed and continues to infringe the ’314 and ’492 patents in violation of 35 U.S.C. §271(b) by inducing others to make, use, sell or offer for sale within the United States, products or processes that practice inventions claimed in those patents. In particular, Walgreen Defendants’s customers practice and directly infringe one or more claims of

the patents-in-suit by, among other acts, accessing www.walgreens.com, www.drugstore.com, www.beauty.com, and www.visiondirect.com, to search for products offered and sold by the Walgreen Defendants, adding to and removing products from an electronic shopping cart maintained by the Walgreen Defendants and ultimately paying for those products from Walgreen Defendants. The Walgreen Defendants' customers also directly infringe one or more claims of the patents-in-suit by, among other acts, accessing the Walgreen Defendants' websites, network-based sales systems, and hypertext statement systems to retrieve the details and status of orders placed with the Walgreen Defendants. All of this is performed over computers interconnected by a network.

17. As discussed above, Plaintiff Soverain has previously asserted these and other patents against several companies operating similar e-commerce websites, including some of the largest retailers in the United States. *See supra* ¶10. When viewed in the context of the industry in which the claimed network sales systems and hypertext statement systems are used, it is reasonable to infer that the Walgreen Defendants either had actual knowledge of or were willfully blind to the patents-in-suit and Plaintiff's general infringement theories before the filing of this suit. In any event, the Walgreen Defendants have actual knowledge of the patents-in-suit as of the date of Plaintiff's Complaint.

18. Moreover, the Walgreen Defendants allow and encourage visitors and customers of www.walgreens.com, www.drugstore.com, www.beauty.com, and www.visiondirect.com, to utilize the network-based sales systems and hypertext statement systems, with—along with common sense—creates a reasonable inference that the Walgreen Defendants intend to have their customers practice the claimed systems and methods and therefore infringe one or more claims of the patents-in-suit. Because the Walgreen Defendants specifically intended to induce

its customers to practice the inventions of the patents-in-suit and did so with knowledge of the patents-in-suit, the Walgreen Defendants are liable for infringement under 35 U.S.C. §271(b).

19. Upon information and belief, the Walgreen Defendants, through their use of systems and methods related to shopping for and purchasing items through its websites, have infringed and continue to infringe the '314 and '492 patents in violation of 35 U.S. C. §271(c) by contributing to the making, using, selling, or offering for sale within the United States, products or processes that practice inventions claimed in those patents. Plaintiff Soverain incorporates by reference the allegations in the proceeding paragraphs. In addition, each customer purchasing products through www.walgreens.com, www.drugstore.com, www.beauty.com, and www.visiondirect.com, practices the patents-in-suit. For example, customers access www.walgreens.com, www.drugstore.com, www.beauty.com, and www.visiondirect.com websites on the Internet, a network, to shop for and purchase a variety of items offered for sale. Each customer's computer is programmed by www.walgreens.com, www.drugstore.com, www.beauty.com, and www.visiondirect.com. This programming allows customers to select items to purchase by adding them to an electronic shopping cart on www.walgreens.com, www.drugstore.com, www.beauty.com, and www.visiondirect.com. This programming also allows customers to modify the contents of the shopping cart, and to complete the transaction at a later time and from a separate device, if necessary. A shopping cart is kept for each individual customer and each item is identified in the cart. The customer can then purchase the items in the shopping cart by sending a request through www.walgreens.com, www.drugstore.com, www.beauty.com, and www.visiondirect.com, which initiates a payment transaction for the items in the shopping cart. Further, www.walgreens.com, www.drugstore.com, www.beauty.com, and www.visiondirect.com, allows customers to check the status of a

transaction, place a reorder and process a return.

20. These acts by the Walgreen Defendants' customers constitute direct infringement of the '314 and '492 patents, and as used in the manner described above, the accused network-based sales systems and hypertext statement systems have no substantial non-infringing uses. Accordingly, the Walgreen Defendants are liable for contributory infringement.

21. Plaintiff Soverain has been damaged by the Walgreen Defendants' infringement and will continue to be damaged by such infringement.

22. Plaintiff Soverain has suffered and continues to suffer irreparable harm and will continue to do so unless the Walgreen Defendants are enjoined therefrom by this Court.

JURY DEMAND

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Soverain requests entry of judgment in its favor and against Defendants as follows:

- A. Declaring that Defendants Walgreen Co., Walgreens.com, Inc., Beauty.com, Inc., Drugstore.com, Inc., and Vision Direct, Inc. have infringed U.S. Patent Nos. 5,715,314 and 5,909,492.
- B. Awarding the damages arising out of Defendants Walgreen Co., Walgreens.com, Inc., Beauty.com, Inc., Drugstore.com, Inc., and Vision Direct, Inc.'s infringement of U.S. Patent Nos. 5,715,314 and 5,909,492, including enhanced damages pursuant to 35 U.S.C. § 284, to Soverain, together with prejudgment and post-judgment interest, in an amount according to proof;

- C. Permanently enjoining Defendants Walgreen Co., Walgreens.com, Inc., Beauty.com, Inc., Drugstore.com, Inc., and Vision Direct, Inc. and their respective officers, agents, employees, and those acting in privity with them, from further infringement, including contributory infringement and/or inducing infringement, of U.S. Patent Nos. 5,715,314 and 5,909,492.
- D. Awarding attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law; and
- E. Awarding such other costs and further relief as the Court may deem just and proper.

DATED: April 4, 2014

Respectfully submitted,

By: John P. Lahad
T. John Ward, Jr.
State Bar No. 00794818
jw@wsfirm.com
J. Wesley Hill
State Bar No. 24032294
wh@wsfirm.com
Claire Abernathy Henry
State Bar No. 24053063
claire@wsfirm.com
WARD AND SMITH LAW FIRM
111 W. Tyler St.
Longview, Texas 75601
Telephone (903) 757-6400
Facsimile (903) 757-2323

Max L. Tribble, Jr. – Lead Counsel
State Bar No. 20213950
mtribble@susmangodfrey.com
John P. Lahad
State Bar No. 24068095
jlahad@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1000 Louisiana Street, Suite 5100
Houston, Texas 77002
Telephone: (713) 651-9366
Facsimile: (713) 654-6666

Justin A. Nelson
State Bar No. 24034766
jnelson@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1201 Third Ave, Suite 3800
Seattle, WA 98101
Telephone: (206) 516-3880
Facsimile: (206) 516-3883

Kalpana Srinivasan
CA State Bar No. 237460
ksrinivasan@susmangodfrey.com
SUSMAN GODFREY L.L.P.
1901 Avenue of the Stars, Suite 950
Los Angeles, CA 90067
Telephone: (310) 789-3100
Facsimile: (310) 789-3150

Michael C. Smith
State Bar No. 18650410
SIEBMAN, BURG, PHILLIPS & SMITH L.L.P.
113 East Austin St.
P.O. Box 1556
Marshall, Texas 75671
Telephone: (903) 938-8900
Facsimile: (903) 767-4620
michaelsmith@seibman.com

S. Calvin Capshaw
State Bar No. 03783900
Elizabeth L. DeRieux
State Bar No. 05770585
CAPSHAW DERIEUX, LLP
1127 Judson Road, Suite 220
P. O. Box 3999
Longview, Texas 75601-5157
Telephone: (903) 236-9800
Facsimile: (903) 236-8787
ccapshaw@capshawlaw.com
ederieux@capshawlaw.com

Attorneys for Sovereign Software LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CD-5(a)(3) on April 4, 2014.

/s/John P. Lahad