

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

DATA CARRIERS, LLC,

Plaintiff,

v.

TOSHIBA AMERICA INFORMATION
SYSTEMS, INC.,

Defendant.

C.A. No. 12-349-LPS

JURY TRIAL DEMANDED

THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Plaintiff Data Carriers, LLC (“Data Carriers”) makes the following allegations against Defendant Toshiba America Information Systems, Inc. (“Defendant”).

THE PARTIES

1. Plaintiff Data Carriers is a Delaware limited liability company having a principal place of business at 4023 Kennett Pike, Suite 531, Wilmington, Delaware 19807-2018.

2. On information and belief, Toshiba America Information Systems, Inc. is a California corporation with its principal office at 9740 Irvine Boulevard, Irvine, California 92618. Defendant has appointed The Corporation Trust Company, located at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801, as its agent for service of process.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, 35 U.S.C. § 1, et seq., including § 271. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Defendant because, among other reasons, Defendant has done business in this District, has committed and continues to commit acts of patent infringement in this District, and has harmed and continues to harm Data Carriers in this District, by, among other things, using, selling, offering for sale, and importing infringing products in this District.

5. Venue is proper in this District under 28 U.S.C. §§ 1391(b)-(d) and 1400(b) because, among other reasons, Defendant is subject to personal jurisdiction in this District, and has committed acts of patent infringement in this District. On information and belief, for example, Defendant has used, sold, offered for sale, and imported infringing products in this District.

COUNT I
DIRECT INFRINGEMENT OF U.S. PATENT NO. 5,388,198

6. Data Carriers is the owner by assignment of United States Patent No. 5,388,198 (the “’198 patent”), entitled “Proactive Presentation of Automating Features to a Computer User.” The ’198 patent issued on February 7, 1995. A true and correct copy of the ’198 patent is attached as Exhibit A.

7. Defendant directly infringed at least claim 5 of the ’198 patent, in this judicial district and elsewhere in the United States, by, among other things, making, using, importing, offering for sale, and/or selling products that automatically intervene in the use of a computer system to suggest or present features based on information on the use of the system, including but not limited to autocomplete features of certain electronic devices, including laptops, all-in-one desktops, and software loaded onto and used on such devices. For example, Defendant’s Satellite series laptops, and Excite and Thrive tablets infringe the ’198 patent. Such products

continuously monitor and compare user manipulations and program context with feature templates stored in memory, and present automating features if a match is found. By making, using, importing, offering for sale, and/or selling such products, and all like products, Defendant has injured Data Carriers and is thus liable for infringement of the '198 patent pursuant to 35 U.S.C. § 271.

8. Defendant has committed these acts of infringement without license or authorization.

9. As a result of Defendant's infringement of the '198 patent, Data Carriers has suffered monetary damages in an amount not yet determined, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.

COUNT II
INDIRECT INFRINGEMENT OF U.S. PATENT NO. 5,388,198

10. Data Carriers reasserts and realleges the allegations contained in Paragraphs 1-9 as if such allegations were set forth in full herein.

11. Data Carriers is the owner by assignment of the '198 patent.

12. Data Carriers has the exclusive right to prevent, and to recover damages for, infringement of the claims of the '198 patent.

13. On information and belief, Defendant has known of Data Carriers' rights under the '198 patent since at least as early as the service of this action or March 16, 2012, the filing date of the Complaint in this action (D.I. 1).

14. On information and belief, Defendant induced and continued to induce infringement of claims of the '198 patent, including at least claim 5 of the '198 patent. Defendant

actively and knowingly required, encouraged, assisted, induced, aided, and abetted its customers, and/or users to directly infringe the '198 patent. Defendant actively and knowingly induced its customers, and/or users to use Defendant's products that automatically intervene in the use of a computer system to suggest or present features based on information on the use of the system, including but not limited to autocomplete features of certain electronic devices, including laptops, all-in-one desktops, and software loaded onto and used on such devices. Such products continuously monitor and compare user manipulations and program context with feature templates stored in memory, and present automating features if a match is found. The accused instrumentalities include, for example, Defendant's Satellite series laptops, and Excite and Thrive tablets. Defendant knew of the '198 patent at the time of such inducement, and, despite such knowledge, actively and knowingly required, encouraged, assisted, induced, aided, and abetted its customers, and/or users to directly infringe '198 patent with the specific intent that such persons use the accused instrumentalities in a way that infringes the '198 patent. At a minimum, Defendant provided instructions on how to use the accused instrumentalities in a way that infringes the '198 patent and knew or should have known that its actions, including providing such instructions, were inducing infringement.

15. Defendant has injured Data Carriers and is thus liable for infringement of the '198 patent pursuant to 35 U.S.C. § 271(b).

16. Defendant has committed these acts of infringement without license or authorization.

17. As a result of Defendant's infringement of the '198 patent, Data Carriers has suffered monetary damages in an amount not yet determined, but in no event less than a

reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.

PRAYER FOR RELIEF

Data Carriers respectfully requests that the Court enter:

- A. A judgment in favor of Data Carriers that Defendant has infringed the '198 patent;
- B. A judgment and order requiring Defendant to pay Data Carriers its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '198 patent as provided under 35 U.S.C. § 284;
- C. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Data Carriers its reasonable attorneys' fees against Defendant;
- D. A judgment and order requiring Defendant to provide an accounting and to pay supplemental damages to Data Carriers, including without limitation, prejudgment and post-judgment interest; and
- E. Any and all other relief to which Data Carriers may show itself to be entitled.

June 4, 2014

BAYARD, P.A.

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