

Robert A. Huntsman, ISB #5345
HUNTSMAN LAW GROUP, PLLC
10400 W. Overland Road, #174
Boise, ID 83709

Email: bobh@huntsmanlg.com
Telephone Number: (208) 860-4379

Attorney for the Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

BETTER FOOD CHOICES, LLC,

v.

MYNETDIARY, INC.,

MYFITNESSPAL, INC.,

AMAZON, INC.,

APPLE, INC.,

GOOGLE, INC.,

and

WEIGHT WATCHERS
INTERNATIONAL, INC.,

Defendants.

Case No. 1:14-cv-00204-CWD

FIRST AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT

In accordance with Fed. R. Civ. Proc 15(a)(1), Plaintiff Better Food Choices, LLC (hereafter “Plaintiff”) by way of its First Amended Complaint against the above named Defendants MyNetDiary, Inc., MyFitnessPal, Inc., Amazon, Inc., Apple, Inc., Google, Inc., and Weight Watchers International, Inc., alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 et seq.

THE PARTIES

2. Plaintiff Better Food Choice, LLC is a duly organized Pennsylvania limited liability company with its principal place of business in Flourtown, Pennsylvania.

3. On information and belief, Defendant MyNetDiary, Inc. is a New Jersey corporation headquartered at 811 Church Road, Suite 105, Cherry Hill, New Jersey 08002.

4. On information and belief, Defendant MyFitnessPal, Inc. is a Delaware corporation headquartered at 525 Brannan, Ste 300, San Francisco, California 94017. MyFitnessPal, Inc. may be serviced through its registered agent, Michael Lee, also at 525 Brannan, Ste 300, San Francisco or through its registered agent in Delaware.

5. On information and belief, Defendant Amazon, Inc. is Delaware Corporation headquartered at 410 Terry Ave. N., Seattle, Washington 98109. Amazon, Inc. may be served through its registered agent at Corporation Service Company, 2711 Centerville Rd Ste 400, Wilmington, Delaware 19808.

6. On information and belief, Defendant Apple, Inc. (hereafter “Apple”) is a California Corporation headquartered at 1 Infinite Loop, Cupertino, CA 95014.

7. On information and belief, Defendant Google, Inc. (hereafter “Google”) is a Delaware corporation headquartered at 1600 Amphitheatre Parkway, Mountain View, California

94043. Google, Inc. may be served through its registered agent at Corporation Service Company, 211 East 7th Street Suite 620, Austin, Texas 78701.

8. On information and belief, Defendant Weight Watchers, International, Inc. (hereafter "WW") is a Virginia corporation, headquartered at 300 Jericho Quadrangle, Suite 350 Jericho, New York 11753.

JURISDICTION AND VENUE

9. This Court has personal jurisdiction of each Defendant because each Defendant transacts business through the United States, including the state of Idaho, sells, and continues to offer for sale its products in the State of Idaho.

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

11. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

12. Venue in this district is proper under 28 U.S.C. § 1391(c) and § 1400(b).

FACTUAL BACKGROUND

13. On November 24, 1998, U.S. Patent No. 5,841,115 hereafter "the '115 patent"), entitled "Nutritional Information System for Shoppers" was duly and legally issued by the United States Patent and Trademark Office to the Plaintiff. A copy of the '115 patent has been previously filed (Docket No. 1, Exh. A.).

14. The Plaintiff, Better Food Choices, Inc., is the assignee of record of the '115 patent.

15. The '115 patent teach and claims technology directed toward using hand held computing devices to scan barcodes from food products and retail grocery stores and similar locations, then use the barcode to look up nutritional information related to the identified food product and correlate the nutritional data information specific to the user, typically nutritional goals, user to help the user make better informed nutritional choices.

16. In 1998, when the '115 was issued, hand held computing devices were very expensive and not readily available, and the technology of the '115 patent was not widely available to the public.

17. In 2007, Apple introduce the original iPhone and era of the widespread use of smartphones was initiated.

18. Shortly thereafter, the iPhone and its competitors became prolific in the consumer marketplace.

19. Competitive to the iPhone is a family of smartphones (hereafter "Android phones") that operate on the Android operating system developed and marketed by Google, Inc.

20. Android phones are manufactured by a number of different manufacturers.

21. With few exceptions, Apple iPhones and tablets are able to read and interpret barcodes using a built-in camera.

22. With few exceptions, Android-based devices are able to read and interpret barcodes using a built-in camera.

23. Most Apple iPhones and tablets and most Android devices have the ability to run computer programs (hereafter "apps") specifically designed to run on smartphones, tablets and similar devices.

24. Apple has a program to encourage and incentivize application developers to develop apps that will run on Apple products.

25. Apple owns and operates a well known app store known as the iTunes store or, alternative the "App Store" (hereafter "iTUNES") where Apple customers can shop for, purchase, download, and install apps specifically designed for Apple iPhones and tablets.

26. Apps are installed on a device by ITUNES as part of the purchase and download process.

27. Apple works in a collaborative fashion with app developers to assist and persuade app developers to develop useful and popular apps for Apple iPhones and tablets.

28. Apple has a specific process that developers need to go through to get their app into the iTunes stores.

29. Without Apple's approval, an app will not be available in the iTunes store.

30. Apple receives monetary compensation and/or non-monetary benefits for apps sold in its iTunes store.

31. Google has a program to encourage and incentivize application developers to develop apps that will run on Android phones and tablets.

32. Google owns and operates a well known app store known as "Google Play" where Android users can shop for, purchase, download. And install apps specifically designed for Android-based phones and tablets.

33. Apps are installed on a device by Google Play as part of the purchase and download process.

34. Google works in a collaborative fashion with app developers to assist and persuade app developers to develop useful and popular apps for Android phones and tablets.

35. Google has a specific process that developers need to go through to get their app into the Google Play store.

36. On information and belief, without Google's implicit approval, an app will not be available in the Google Play store.

37. Google receives monetary compensation and/or non-monetary benefits for apps sold in its Google Play store.

38. Amazon owns and operates a well known internet store known as "Amazon.com" where Android users can shop for, purchase, download and install apps primarily designed for

Android-based phones and tablets.

39. Amazon receives monetary compensation and/or non-monetary benefits for apps sold in its Amazon.com store.

40. MyNetDiary Inc., is a company that develops and sells an app generally called MyNetDiary (hereafter “MYNETDIARY APP”).

41. MYNETDIARY APP is sold through the Apple iTunes store, through Google’s Google Play store, and through Amazon’s Amazon.com online store.

42. MyFitnessPal Inc., is a company that develops and sells an app generally called MyFitnessPal (hereafter “MYFITNESSPAL APP”).

43. MYFITNESSPAL APP is distributed through the Apple iTunes store, through Google’s Google Play store, and through Amazon’s Amazon.com online store.

44. WW is a company that develops and sells a family of apps including the “WW Online” app and the “WW Scanner” app (hereafter collectively referred to as (“WW APPS”).

45. WW APPS serve as an extension of WW’s online subscription nutritional counseling service.

46. WW APPS are distributed through the Apple iTunes store and through Google’s Google Play store.

CLAIM FOR RELIEF

Claim 1

Direct Infringement of U.S. Patent No. 5,841,115 (35 U.S.C. § 271(a)) by MyNetDiary, Inc.

47. The allegations set forth in the foregoing paragraphs 1 through 42 are hereby re-alleged and incorporated herein by reference.

48. Defendant MyNetDiary, Inc., makes sells, and uses, throughout the United States and this district, MYNETDIARY APP designed to be downloaded and executed on iPhones,

tablets, and similar devices, made and sold by Apple, Inc.

49. MYNETDIARY APP when downloaded and deployed on an Apple product, has a means for inputting personal data related to an individual.

50. MYNETDIARY APP, when downloaded and deployed on an Apple product, has a barcode means for inputting data identifying at least one food product which a shopper has selected, specified, purchased, or consumed.

51. MYNETDIARY APP, when downloaded and deployed on an Apple product, has a processor means under the control of a prestored computer program for correlating the personal data with prestored nutritional data, including a barcode address, pertinent to at least one food product which the shopper has selected, specified, purchased, or consumed.

52. MYNETDIARY APP, when downloaded and deployed on an Apple product, has a means for outputting information pertinent to at least one food product and the personal data of the individual.

53. MYNETDIARY APP, when downloaded and deployed on an Apple iPhone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

54. Whenever a user of MYNETDIARY APP invokes the scan function of the app, MyNetDiary, Inc. uses the claimed invention in concert with the user by receiving the barcode number from the user device, retrieving nutritional data from its server, and, transmitting nutritional data back to the user device.

Claim 2

Direct Infringement of U.S. Patent No. 5,841,115 (35 U.S.C. § 271(a)) by MyFitnessPal, Inc.

55. The allegations set forth in the foregoing paragraphs 1 through 54 are hereby re-alleged and incorporated herein by reference.

56. Defendant MyFitnessPal, Inc., makes, uses, and sells, throughout the United

States and this district, MYFITNESSPAL APP designed to be downloaded and executed on iPhones, tablets, and similar devices, made and sold by Apple, Inc.

57. MYFITNESSPAL APP when deployed on an Apple product, has a means for inputting personal data related to an individual.

58. MYFITNESSPAL APP, when deployed on an Apple product, has a barcode means for inputting data identifying at least one food product which a shopper has selected, specified, purchased, or consumed.

59. MYFITNESSPAL APP, when deployed on an Apple product, has a processor means under the control of a prestored computer program for correlating the personal data with prestored nutritional data, including a barcode address, pertinent to at least one food product which the shopper has selected, specified, purchased, or consumed.

60. MYFITNESSPAL APP, when deployed on an Apple product, has a means for outputting information pertinent to at least one food product and the personal data of the individual.

61. MYFITNESSPAL APP, when deployed on an Apple iPhone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

62. Whenever a user of MYFITNESSPAL APP invokes the scan function of the app, MyFitnessPal, Inc. uses the claimed invention in concert with the user by receiving the barcode number from the user device, retrieving nutritional data from its server, and, transmitting nutritional data back to the user device.

Claim 3

Direct Infringement of U.S. Patent No. 5,841,115 (35 U.S.C. § 271(a)) by WeightWatchers, Inc.

63. The allegations set forth in the foregoing paragraphs 1 through 62 are hereby re-alleged and incorporated herein by reference.

64. Defendant WW, makes, uses, and sells, throughout the United States and this district, WW APPS designed to be downloaded and executed on iPhones, tablets, and similar devices, made and sold by Apple, Inc.

65. WW APPS when deployed on an Apple product, have a means for inputting personal data related to an individual.

66. WW APPS, when deployed on an Apple product, have a barcode means for inputting data identifying at least one food product which a shopper has selected, specified, purchased, or consumed.

67. WW APPS, when deployed on an Apple product, have a processor means under the control of a prestored computer program for correlating the personal data with prestored nutritional data, including a barcode address, pertinent to at least one food product which the shopper has selected, specified, purchased, or consumed.

68. WW APPS, when deployed on an Apple product, have a means for outputting information pertinent to at least one food product and the personal data of the individual.

69. WW APPS, when deployed on an Apple iPhone or tablet, each is an apparatus that infringes at least claim 1 of the '115 patent.

70. Whenever a user of the WW APPS invokes the scan function of the app, WW uses the claimed invention in concert with the user by receiving the barcode number from the user device, retrieving nutritional data from its server, and, transmitting nutritional data back to the user device.

Claim 4

Direct Infringement of U.S. Patent No. 5,841,115 (35 U.S.C. § 271(a)) by Apple, Inc.

71. The allegations set forth in the foregoing paragraphs 1 through 70 are hereby re-alleged and incorporated herein by reference.

72. Apple, Inc., in collaboration with MyNetDiary, Inc., sells MYNETDIARY APP

in ITUNES.

73. The last step in making MYNETDIARY APP functional on an Apple iPhone or tablet, is the installation of MYNETDIARY APP on an Apple iPhone or tablet by ITUNES.

74. MYNETDIARY APP, when deployed on an Apple iPhone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

75. Apple, Inc., in collaboration with MyFitnessPal Inc., sells MYFITNESSPAL APP.

76. The last step in making MYFITNESSPAL APP functional on an Apple iPhone or tablet, is the installation of MYFITNESSPAL APP on an Apple iPhone or tablet by ITUNES.

77. MYFITNESSPAL AP, when deployed on an Apple iPhone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

78. Apple, Inc., in collaboration with WW, sells WW APPS.

79. The last step in making WW APPS functional on an Apple iPhone or tablet, is the installation of each WW APPS on an Apple iPhone or tablet by ITUNES.

80. Each of the WW APPS, when deployed on an Apple iPhone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

81. On information and belief, Apple, Inc., in collaboration with each company identified in Exhibit 1, attached, sells the corresponding app identified in Exhibit 1 through ITUNES.

82. The last step in making each app identified in Exhibit 1 functional on an Apple iPhone or tablet, is the installation of the app on an Apple iPhone or tablet by ITUNES.

83. Each app in Exhibit 1, when deployed on an Apple iPhone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

84. Because Apple sells infringing apps in concert with each app provider, and

because Apple, Inc. performs the last assembly step needed to make each infringing app operational by directly downloading and installing the infringing apps on its products with ITUNES, Apple is directly liable for patent infringement.

Claim 5

Direct Infringement of U.S. Patent No. 5,841,115 (35 U.S.C. § 271(a)) by Google, Inc.

85. The allegations set forth in the foregoing paragraphs 1 through 84 are hereby re-alleged and incorporated herein by reference.

86. Google, Inc., in collaboration with MyNetDiary, Inc., sells MYNETDIARY APP in Google Play Store.

87. The last step in making MYNETDIARY APP functional on a Google Phone or tablet, is the installation of MYNETDIARY APP on a Google Phone or tablet by Google Play Store.

88. MYNETDIARY APP, when deployed on a Google phone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

89. Google, Inc., in collaboration with MyFitnessPal Inc., sells MYFITNESSPAL APP.

90. The last step in making MYFITNESSPAL APP functional on a Google Phone or tablet, is the installation of MYFITNESSPAL APP on a Google Phone or tablet by Google Play Store.

91. MYFITNESSPAL AP, when deployed on a Google Phone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

92. Google, Inc., in collaboration with WW, sells WW APPS.

93. The last step in making WW APPS functional on a Google Phone or tablet, is the

installation of each WW APPS on a Google Phone or tablet by Google Play Store.

94. Each of the WW APPS, when deployed on a Google Phone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

95. On information and belief, Google, Inc., in collaboration with each company identified in Exhibit 2, attached, sells the corresponding app identified in Exhibit 2.

96. The last step in making each app identified in Exhibit 2 functional on a Google Phone or tablet, is the installation of the app on a Google Phone or tablet by Google Play Store.

97. Each app in Exhibit 2, when deployed on a Google Phone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

98. Because Google sells infringing apps in concert with each app provider, and because Google, Inc. performs the last assembly step needed to make each infringing app operational by directly downloading and installing the infringing apps on its products with Google Play Store, Google is directly liable for patent infringement.

Claim 6

Direct Infringement of U.S. Patent No. 5,841,115 (35 U.S.C. § 271(a)) by Amazon, Inc.

99. The allegations set forth in the foregoing paragraphs 1 through 98 are hereby re-alleged and incorporated herein by reference.

100. Amazon, Inc., in collaboration with MyNetDiary, Inc., sells MYNETDIARY APP on Amazon.com.

101. The last step in making MYNETDIARY APP functional on an Android Phone or tablet, is the installation of MYNETDIARY APP on an Android Phone or tablet by Amazon.com.

102. MYNETDIARY APP, when deployed on an Android phone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

103. Amazon, Inc., in collaboration with MyFitnessPal Inc., sells MYFITNESSPAL

APP.

104. The last step in making MYFITNESSPAL APP functional on an Android Phone or tablet, is the installation of MYFITNESSPAL APP on an Android Phone or tablet by Amazon.com.

105. MYFITNESSPAL AP, when deployed on an Android Phone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

106. On information and belief, Amazon, Inc., in collaboration with each company identified in Exhibit 3, attached, sells the corresponding app identified in Exhibit 3.

107. The last step in making each app identified in Exhibit 3 functional on an Android Phone or tablet, is the installation of the app on an Android Phone or tablet by Amazon.com.

108. Each app in Exhibit 3, when deployed on an Android Phone or tablet, is an apparatus that infringes at least claim 1 of the '115 patent.

109. Because Amazon sells infringing apps in concert with each app provider, and because Amazon, Inc. performs the last assembly step needed to make each infringing app operational by directly downloading and installing the infringing apps on its products with Amazon.com, Amazon is directly liable for patent infringement.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully requests that this Court enter judgment for the Plaintiff and against each Defendant as follows:

- a) An adjudication that each Defendant has infringed the '115 patent;
- b) An award of damages to be paid by Defendant adequate to compensate the Plaintiff for Defendant's infringement of the above Patents, including a reasonable royalty, interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

c) For such other and further relief authorized by statute or deemed just and appropriate by this Court.

Dated this 25th day of July, 2014.

HUNTSMAN LAW GROUP, PLLC
By /s/ Robert A. Huntsman
Robert A. Huntsman
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 25, 2014, I caused the foregoing to be electronically filed through the CM/ECF system, which caused the counsel of record to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/Robert A. Huntsman
Robert A. Huntsman