

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Collaborative Agreements, LLC

Plaintiff,

v.

**Adobe Systems Incorporated,
EchoSign, Inc.,
Citrix Systems, Inc.,
Time Warner Cable, Inc.,
Time Warner Cable Enterprises, LLC,
Time Warner Cable Texas, LLC,
Time Warner Cable Information Services
(Texas) LLC, and
TiVo, Inc.**

Defendants.

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Civil Action No. 1:14-cv-356

Jury Trial Demanded

PLAINTIFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Collaborative Agreements, LLC d/b/a Oui Agree, files this Second Amended Complaint for patent infringement under 35 U.S.C. § 271 and alleges, based on its own personal knowledge with respect to its own actions and based upon information and belief with respect to all others' actions, as follows:

THE PARTIES

1. Plaintiff **Collaborative Agreements LLC d/b/a Oui Agree** ("Oui Agree") is a limited liability company organized and existing under the laws of the State of Texas, and maintains its principal place of business in Austin, Texas, 78749.

2. Defendant **Adobe Systems Incorporated** ("Adobe Systems") is a corporation organized and existing under the laws of the State of Delaware with its principal place of

business at 345 Park Avenue, Mailstop A15-Tax, San Jose, CA 95110. Adobe may be served through its registered agent Corporation Service Company d/b/a CSC, 211 E. 7th Street, Suite 620, Austin, TX 78701.

3. Defendant **EchoSign, Inc.** (“EchoSign”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 345 Park Avenue, San Jose, CA 95110-2704. EchoSign may be served through its registered agent Corporation Service Company located at 2711 Centerville Road, Suite 400, Wilmington, Delaware, 19808. Upon information and belief, EchoSign is a wholly owned subsidiary of Adobe Systems.

4. Defendants Adobe Systems and EchoSign are hereafter collectively referred to as “Adobe.”

5. Adobe has and continues to design, market, make, use, make available for others’ use, offers to license or licenses in the United States, sells and/or offers to sell software for facilitating transactions between two or more parties, including but not limited to Adobe® EchoSign® (“Infringing Products”). Adobe provides technologies that allow users to send, receive, and sign electronic documents securely, including but not limited to the Infringing Products. Adobe does business in the United States and, more particularly, in the State of Texas and the Western District of Texas, by designing, marketing, making, using, making available for another’s use, offering to license or licensing in the United States, selling and/or offering to sell, products, including but not limited to Infringing Products, that infringe the patent claims involved in this action or by transacting other business in this District.

6. Defendant **Citrix Systems, Inc.** (“Citrix”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 851 West Cypress

Creek Road, Fort Lauderdale, Florida 33309. Citrix may be served through its registered agent, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street Suite 620, Austin, TX 78701.

7. Defendant **Time Warner Cable, Inc.** (“TWC”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 60 Columbus Circle, New York, New York 10023. TWC may be served through its registered agent CT Corporation System, 111 Eighth Avenue, 13th Floor, New York, NY 10011.

8. Defendant **Time Warner Cable Enterprises, LLC** (“TWCE”) is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 60 Columbus Circle, New York, New York 10023. TWCE may be served through its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX, 75201. On information and belief TWCE is a wholly owned subsidiary of TWC.

9. Defendant **Time Warner Cable Texas, LLC** (“TWCT”) is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business at 60 Columbus Circle, New York, New York 10023. TWCT may be served through its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX, 75201. On information and belief, TWCT is a wholly owned subsidiary of TWCE.

10. Defendant **Time Warner Cable Information Services (Texas) LLC** (“TWCIS”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 7800 Crescent Executive Drive, Attention: Kathy Foster, Charlotte, NC 28217. TWCIS may be served through its registered agent CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, TX, 75201.

11. Defendants TWC, TWCE, TWCT, and TWCIS are collectively referred to as “Time Warner.”

12. Defendant **TiVo, Inc.** (“TiVo”) is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 2160 Gold Street, Alviso, CA, 95002. TiVo may be served through its registered agent Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620, Austin TX, 78701-3218.

13. Defendants Citrix, Time Warner, and TiVo are hereinafter referred to collectively as the “Customer Defendants.”

14. Customer Defendants have and continue to use and/or make available for another’s use, software for facilitating transactions between two or more parties, including but not limited to the Infringing Products. Customer Defendants provide and/or use technologies that allow users to send, receive, and sign electronic documents, including but not limited to the Infringing Products. Customer Defendants do business in the United States and, more particularly, in the State of Texas and the Western District of Texas, by using and/or making available for another’s use, products, including but not limited to Infringing Products, that infringe the patent claims involved in this action or by transacting other business in this District.

JURISDICTION AND VENUE

15. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).

16. Personal jurisdiction exists generally over Defendants because they have sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within this District. Personal Jurisdiction also exists specifically over Defendants because of Defendants' conduct in making, using, making available for another's use, offering to license or licensing in the United States, selling and/or offering to sell, infringing systems, products, and services within the State of Texas and within this District.

17. Adobe, directly or through intermediaries (including distributors, retailers, and others), designs, markets, makes, uses, makes available for another's use, offers to license or licenses in the United States, sells and/or offers to sell, products, including but not limited to Infringing Products at www.echosign.adobe.com, that infringe one or more claims of the asserted patent in the United States, the State of Texas, and the Western District of Texas. Adobe has purposefully and voluntarily placed one or more of its Infringing Products into the stream of commerce with the expectation that they will be purchased, used, and/or placed into service by consumers in the Western District of Texas. Adobe has committed the tort of patent infringement within the State of Texas and, more particularly, within the Western District of Texas.

18. Each of the Customer Defendants identified in paragraphs 6-12 are current or former customers and/or users of Defendant Adobe's systems and services including by way of example only and without limitation, the Infringing Products.

19. Each of the Customer Defendants is subject to personal jurisdiction, in addition to the reasons set forth above and below, because each Customer Defendant engages in infringing activities by using and/or putting into service, within this district, at least one of the Infringing Products provided by Defendant Adobe. Each Customer Defendant has authorized, participated

in, and/or facilitated transactions occurring in whole or in part within this District that infringe the '393 Patent asserted herein.

20. Venue is proper in the Austin Division of the Western District of Texas pursuant to 28 U.S.C. §1391 and 28 U.S.C. § 1400(b) for the reasons set forth above and below. Furthermore, venue is proper because Defendants conduct business within this District and/or solicit and establish relationships with entities within this District, and such relationships involve the making, selling, offering to sell, or using infringing products or services as discussed below. Each act of Defendants' directly- and indirectly-infringing conduct in this District gives rise to proper venue.

21. Venue is also proper in this District because Oui Agree's headquarters are in the Western District of Texas where its employees are located. Further at least one inventor on the patent at issue lives in the Western District of Texas.

PATENT INFRINGEMENT

22. The allegations of paragraphs 1-17 above are incorporated by reference as if fully set for herein.

23. On September 18, 2012, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 8,271,393 ("the '393 Patent" attached as **Exhibit A**), entitled "System and Method For Facilitating Transactions Between Two or More Parties," to Ronald Fremont Twining and John Christopher Hallard as the named inventors.

24. Plaintiff is the owner as assignee of all rights, title, and interest in and under the '393 Patent, including all rights to sue and recover for past and future infringement. Such

assignments have been properly executed and recorded with the United States Patent and Trademark Office.

25. Defendants have infringed and continue to infringe one or more claims of the '393 Patent by, among other acts, making, using, making available for another's use, offering to license or licensing in the United States, selling, and/or offering to sell the Infringing Products. The Defendants have not obtained permission from OUI Agree to make, use, make available for another's use, offer to license or license in the United States, sell, and/or offer to sell products, including but not limited to Infringing Products, that use the systems and methods claimed in the '393 Patent.

26. Plaintiff has been damaged as a result of Defendants' infringing conduct. Defendants are therefore liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendants' infringement, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

A. Direct Infringement of the '393 Patent

27. OUI Agree incorporates the allegations contained in Paragraphs 1-26 above as if fully set forth herein.

28. The Defendants have been and are now directly infringing at least one claim of the '393 Patent by making, using, making available for another's use, offering to license or licensing in the United States, selling, and/or offering to sell, without OUI Agree's authority, their products and services that use the patented systems and methods for facilitating a transaction between two or more parties.

29. Specifically, Adobe directly infringes the '393 Patent by performing the steps of methods for facilitating transactions between two or more parties such as when customers use the Infringing Products. Additionally, Adobe directly infringes the '393 Patent by making, using, selling, and or offering to sell infringing systems for facilitating transactions between two or more parties such as the Infringing Products. By way of example only, and without limitation, Adobe infringes, literally and/or under the doctrine of equivalents, at least claim 1 of the '393 Patent by performing the steps of the claimed method whenever the Infringing Products are used.

30. Further, Customer Defendants directly infringe the '393 Patent by using and/or making available for another's use, infringing systems for facilitating transactions between two or more parties, such as by way of example the Infringing Products. By way of example only, and without limitation, the Customer Defendants infringe, literally and/or under the doctrine of equivalents, at least claim 49 of the '393 Patent by using and/or making available for another's use systems such as the Infringing Products.

B. Contributory Infringement of the '393 Patent

31. OUI Agree incorporates the allegations contained in Paragraphs 1-30 above as if fully set forth herein.

32. In addition to direct infringement identified, OUI Agree contends that Adobe directly or through intermediaries has and continues to contributorily infringe (literally and/or under the doctrine of equivalents) one or more claims of the '393 Patent by, without limitation, providing, selling and/or offering to sell, components of systems for facilitating transactions between two or more people, such as by way of example the Infringing Products. These

components have no substantial non-infringing uses, and they constitute a material part of the invention. Defendant Adobe's actions contribute to infringement of the '393 Patent by consumers, businesses, distributors, resellers, sales representatives, agents, channel partners, and the Customer Defendants, that use systems such as the Infringing Products. Upon information and belief, Adobe has been aware of the '393 Patent since at least 2012. Adobe was also aware that the components of the systems for facilitating transactions between two or more persons satisfy at least one element of one claim, such as by way of example, claim 49 of the '393 Patent. Adobe further knows that use of the components as part of the system and methods infringes at least one claim, such as by way of example, claim 49 of the '393 Patent. These components include, without limitation, the Infringing Products application or service that a user can download onto their personal computer, mobile device, and/or tablet device.

C. Inducement of Infringement of the '393 Patent

33. OUI Agree incorporates the allegations contained in Paragraphs 1-32 above as if fully set forth herein.

34. Further, OUI Agree contends that Adobe directly or through intermediaries has and continues to induce infringement (literally and/or under the doctrine of equivalents) of one or more claims of the '393 Patent. Adobe has intentionally caused, urged, encouraged, instructed, or aided action that induced infringement of the '393 Patent by others, including but not limited to Adobe's customers, Customer Defendants, and/or Customer Defendants' customers. Such intentional action was and is the selling and/or offering for sale systems for facilitating transactions between two or more people, such as by way of example the Infringing Products. As

a result of its conduct, Adobe induced others, including but not limited to Adobe's customers, Customer Defendants and Customer Defendants' customers, to use systems such as the Infringing Products to infringe the claims of the '393 Patent, by way of example at least claim 49. Because of its knowledge of the '393 Patent, Adobe knew the acts it was inducing would infringe the '393 Patent.

D. Joint Infringement of the '393 Patent

35. Further, OUI Agree contends, on information and belief, that Defendants have committed the above-described acts of direct infringement, contributory infringement, and/or inducement of infringement jointly. OUI Agree contends that as a result of such joint infringement, Defendants are jointly and severally liable for the infringing acts engaged in by each other.

36. OUI Agree contends that Defendant Adobe is responsible for joint infringement because, on information and belief, through its contractual obligations and directions to the Customer Defendants, it directed and controlled the Customer Defendants infringing conduct.

37. Further, OUI Agree contends that the Customer Defendants are responsible for joint infringement because, on information and belief, through their contractual obligations and directions to Defendant Adobe, the Customer Defendants directed and controlled Defendant Adobe's infringing conduct.

WILLFULNESS

38. OUI Agree incorporates and realleges the allegations contained in Paragraphs 1-37 above as if fully set forth herein.

39. Adobe's infringement of the '393 Patent has been and is willful. Adobe had notice and knowledge of the '393 Patent and its infringement of the patent as described above in paragraphs 28-30. Upon information and belief, Adobe has known about the patent since at least 2012.

40. Adobe engaged in the above described conduct despite a high likelihood that its actions infringed the '393 Patent. Further Adobe knew or should have known that its actions constituted a high risk of infringement of the '393 Patent.

41. Additionally, the Defendants' infringement of the '393 Patent is willful to the extent that the filing and service of this Complaint gives the Defendants actual notice of their infringement, and they continue to design, market, make, use, make available for others' use, offer to license or license, sell and/or offer to sell in the United States the Infringing Products, and/or continue to induce others such as the Customer Defendants and new EchoSign customers to infringe the '393 Patent.

VICARIOUS LIABILITY

42. OUI Agree incorporates the allegations contained in Paragraphs 1-41 above as if fully set forth herein.

43. In addition to liability for their own independent conduct, Defendants are also liable for the conduct of their subsidiaries, affiliates, and related entities under the doctrines of alter ego and single business enterprise, and under applicable state and federal statutes and regulations. Specifically, each parent company or holding company entity identified herein is the alter ego of its operating entity Defendant identified herein. For example, upon information and belief, they have common stock ownership (*i.e.*, parent company owning all stock of the

operating subsidiaries), common directors and officers, common business departments and headquarters; the parent or holding company finances and pays the expenses of the subsidiary; and the daily operations, board meetings, books and/or records of the two companies are not kept separate.

DAMAGES

44. Oui Agree incorporates and realleges the allegations contained in Paragraphs 1-43 above as if fully set forth herein.

45. For the above-described infringement, Oui Agree has been injured and seeks damages to adequately compensate it for Defendants' infringement of the '393 Patent. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

46. Oui Agree contends that Defendants willfully infringed the '393 Patent. Oui Agree requests that the Court enter a finding of willful infringement and enhanced damages under 35 U.S.C. § 284 up to three times the amount found by the trier of fact.

47. Oui Agree further requests that the Court enter an order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285. Pursuant to such an order Oui Agree seeks recovery of its reasonable attorneys' fees and expenses.

DEMAND FOR A JURY TRIAL

48. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable of right by a jury.

PRAYER FOR RELIEF

49. The allegations of paragraphs 1-47 above are incorporated by reference as if fully set for herein. Plaintiff respectfully requests the following relief:

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a. A judgment that Defendants have directly infringed the patent-in-suit, contributorily infringed the patent-in-suit, and/or induced the infringement of the patent-in-suit;

b. A preliminary and permanent injunction preventing the Defendant and their officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and/or inducing the infringement of the patent-in-suit;

c. A judgment and order requiring each Defendant to pay Plaintiff damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, including enhanced damages for willful infringement as provided by 35 U.S.C. § 284;

d. A judgment and order finding this to be an exceptional case and requiring each Defendant to pay Plaintiffs the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285;

e. A judgment and order requiring Defendant to pay Plaintiffs pre-judgment and post-judgment interest on the damages award;

f. A judgment and order requiring that in the event a permanent injunction preventing future acts of infringement is not granted, that Plaintiffs be awarded a compulsory ongoing licensing fee; and

g. Such other and further relief as the Court may deem just and proper.

Dated: September 16, 2014

Respectfully submitted,



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