

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

NOBELBIZ, INC.

Plaintiff,

v.

INSIDESALES.COM, INC.,

Defendant.

Civil Action No. 6:13-cv-360-MHS

**JURY TRIAL DEMANDED**

**SECOND AMENDED COMPLAINT**

Plaintiff, NobelBiz, Inc. (“NobelBiz”), by and through its counsel, Capshaw DeRieux, L.L.P. and Venable LLP as for its Second Amended Complaint against Defendant, InsideSales.com, Inc. (hereafter referred to as “Defendant”), states as follows:

**THE PARTIES**

1. Plaintiff NobelBiz is a privately held company incorporated under the laws of the State of Delaware, and having its principal place of business at 5973 Avenida Encinas, Suite 202, Carlsbad, California 92008. NobelBiz also has an office in Plano, Texas, within this District.
2. NobelBiz is a provider of innovative telecommunications solutions to call centers and collection agencies, among other clientele, worldwide, including within this District.
3. Defendant is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 34 East 1700 South, Suite A220, Provo, Utah 84606.

### **JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1, *et seq.*

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

6. This Court has personal jurisdiction over Defendant because of Defendant's continuous and systematic business contacts with the State of Texas.

7. Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1391(b) and (c), and/or 28 U.S.C. § 1400(b).

### **NOBELBIZ'S PATENTS**

#### **U.S. Patent No. 8,135,122 Patent**

8. On March 13, 2012, the USPTO issued United States Patent No. 8,135,122 ("the '122 patent"), entitled "System and Method for Modifying Communication Information (MCI)." A copy of the '122 patent is attached hereto as Exhibit A.

9. NobelBiz is the assignee of the '122 patent.

10. By way of a general description, the '122 patent discloses a system for processing a telephone call from a call originator (also referred to as a calling party) to a call target (also referred to as a receiving party), where the system accesses a database storing outgoing telephone numbers, selects a replacement telephone number from the outgoing telephone numbers based on the telephone number of the call target, and originates an outbound call to the call target with a modified outgoing caller identification ("caller ID").

11. In practice, the invention of the '122 patent allows a calling party's number to appear local or from the same area code as the receiving party.

U.S. Patent No. 8,565,399 Patent

12. On October 22, 2013, the United States Patent and Trademark Office issued United States Patent No. 8,565,399 (“the ‘399 patent”), entitled “System and Method for Modifying Communication Information (MCI).” A copy of the ‘399 patent is attached hereto as Exhibit B.

13. NobelBiz is the assignee of the ‘399 patent.

14. By way of a general description, the ‘399 patent discloses a system for processing a telephone call from a call originator (calling party) to a call target (receiving party), comprising a database for storing telephone numbers, as well as a processor to select from the database a telephone number based on the call target’s area code, to set caller identification (or caller ID) data to the selected number, and to transmit the caller ID data to the call target.

15. In practice, the invention of the ‘399 patent allows a calling party’s number to appear local or from the same area code as the receiving party.

**NOBELBIZ’S AWARD WINNING LOCALTOUCH® SERVICE**

16. NobelBiz has embodied features of the ‘122 and ‘399 patents in its LocalTouch® service.

17. LocalTouch® is designed to enhance contact rates between calling parties and receiving parties.

18. For example, by implementing the novel processes and systems of the ‘122 and ‘399 patents, LocalTouch® has been shown to increase contact rates between calling parties and receiving parties by over thirty percent (30%).

19. LocalTouch® also is important because if the customer misses the call, he or she can use that local number to call the caller back and thereby avoid long distance charges.

20. LocalTouch® is an award winning caller ID management solution. This includes the Technovation Award from the American Teleservices Association (“ATA”) in 2006 and Communications Solutions Product of the Year Award in 2014 for NobelBiz’s Shield, which includes LocalTouch®.

21. NobelBiz has received the Fulcrum Award from the ATA in 2009 as well as the Technovation Award for Service in 2012.

22. NobelBiz has been providing LocalTouch® to customers since at least 2007 to present.

### **THE INFRINGING PRODUCT**

23. Defendant is a provider of, *inter alia*, contact or call center software and services.

24. Mr. Ken Krogue is President & Co-Founder of Defendant.

25. On February 23, 2012, Mr. Krogue stated:

Caller IDs matter: What shows up on your caller ID when you dial a busy decision maker? A blocked number? A Toll Free number? A long distance number? Those are all red flags that say, “I don’t know you.”

Exhibit C.

26. On February 23, 2012, Mr. Krogue further stated: “We have a product called LocalPresence that has been shown to increase contact rates by 58% as a byproduct of many of its other great benefits.” Exhibit C.

27. Defendant offers a local caller ID product called LocalPresence™.<sup>1</sup>

28. LocalPresence™ is marketed to various consumers, which may include businesses that conduct outbound dialing.

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<sup>1</sup> NobelBiz makes no statement regarding the validity (or lack thereof) regarding the alleged marks associated with InsideSales’ products.

29. “If you are using InsideSales.com’s LocalPresence™ system, the PowerDialer will automatically show the local area code number assigned to your Presence Block closest to the recipient’s location.” Exhibit D.

30. LocalPresence™ is offered as part of, *inter alia*, Defendant’s PowerSuite, PowerDialer™, and, Click-to-Call™ platforms.

31. PowerSuite, PowerDialer™, and Click-to-Call™ platforms are each marketed to various consumers which may include businesses that conduct outbound dialing.

32. Defendant will buy phone numbers from area codes throughout the United States also known as a “Presence Block.” Exhibits D-E and H (“Local Presence Block”).

33. Defendant will provide clients with various numbers, which may include local and/or toll-free numbers, to utilize when placing outbound calls.

34. Defendant’s local numbers are stored in its database. Exhibits E-F.

35. “[T]o facilitate accurate usage of LocalPresence . . . [the database stores an] area code, region code, and region/state name . . . .” Exhibit F.

36. With LocalPresence™, Defendant selects a telephone number from its database based on an area code of the telephone number of the call recipient.

37. With LocalPresence™, Defendant provides an originating number used to contact a call recipient based on the area code dialed by a call originator.

38. With LocalPresence™, Defendant also selects a local number, which may be closest to the call recipient’s location, from a selection of numbers.

39. With LocalPresence™, Defendant sets the caller identification data to the telephone number selected from the database.

40. With LocalPresence™, Defendant transmits the set caller identification data to the call recipient.

41. “LocalPresence . . . automatically display[s] a local caller-id in each US area code.” Exhibit G.

42. On February 23, 2012, Mr. Krogue also stated: “A local caller ID has been shown to be 17% to 193% more effective in getting people to answer than those other three.” Exhibit C.

43. The caller ID displayed to the receiving party, if called, is a viable number that will be mapped back to the originating call center, or any other number the system user may choose.

44. Defendant’s LocalPresence™ practices each and every element of one or more of the claims of the ‘122 and ‘399 patents.

45. Upon information and belief, Defendant is knowingly and willfully, directly and indirectly infringing the ‘122 and ‘399 patents by offering to sell and selling LocalPresence™ in the United States, including within this judicial district.

46. Defendant had notice of the ‘122 patent as early as the filing of the original action on April 25, 2013 or sometime thereafter.

47. Defendant has continued to sell its LocalPresence™ from April 25, 2013 to present.

48. Defendant has continued to advertise its LocalPresence™ from April 25, 2013 to present.

49. Given the knowledge of the ‘122 patent and that the ‘122 and ‘399 patents are related, Defendant knew of or should have known about the ‘399 patent upon its issuance on October 22, 2013 or sometime thereafter.

50. Defendant has continued to sell its LocalPresence™ from October 22, 2013 to present.

51. Defendant has continued to advertise its LocalPresence™ from October 22, 2013 to present.

52. Defendant at least had notice of the '399 patent as early as the filing of the amended complaint on May 21, 2014 or sometime thereafter.

53. Defendant has continued to sell its LocalPresence™ from May 21, 2014 to present.

54. Defendant has continued to advertise its LocalPresence™ from May 21, 2014 to present.

55. Upon information and belief, Defendant's infringement of the '122 and '399 patents has been and continues to be willful.

56. Defendant has disregarded and continues to disregard an objectively high likelihood that its actions constitute infringement of the '122 and '399 patents. This objectively defined risk has been known or is so obvious that it should have been known to Defendant.

#### **COUNT I – PATENT INFRINGEMENT OF THE '122 PATENT**

57. NobelBiz restates and incorporates by reference paragraphs 1 through 56 as if stated fully herein.

58. In violation of 35 U.S.C. § 271(a), Defendant has, literally and under the doctrine of equivalents, infringed the '122 patent and still is, literally and under the doctrine of equivalents, infringing the '122 patent, by, among other things, making, using, offering for sale, and/or selling its LocalPresence™ in the United States, and will continue to do so unless such infringing activities are enjoined by this Court.

59. Nonetheless, in violation of 35 U.S.C. § 271(b), Defendant knowingly induced infringement and possessed specific intent to encourage another's infringement of one or more claims of the '122 patent by, among other things, offering for sale, selling and/or by soliciting end users or customers to purchase and use of LocalPresence™ in the United States, and will continue to do so unless such infringing activities are enjoined by this Court.

60. Specifically, Defendant had notice of the '122 patent as early as the filing of the original action on April 25, 2013 or sometime thereafter.

61. Defendant has continued to sell and advertise its LocalPresence™ from April 25, 2013 to present.

62. Defendant admittedly "markets its [accused] Service to various customers which may include businesses that conduct outbound dialing." Dkt No. 22, ¶ 22.

63. For example, Defendant provides and advertises to its customers the benefits of LocalPresence™ through marketing, case studies, and instructional materials. Exhibits C-E, and G-I.

64. Mr. Krogue has advised that: "One of my favorites is a product called LocalPresence. If you're calling a lead in New York from San Jose, LocalPresence will display a New York area code (212) on your lead's Caller ID." Exhibits J-K.

65. Additionally, Defendant further offers training, wherein customers can learn or be instructed on how LocalPresence™ operates. Exhibits G, L, and M ("Also included will be training on our LocalPresence capability which increases contact rates by 1 to 4x.")

66. By following these materials, these customers can, are intended to, and do practice one or more of the claims of the '122 patent.



67. NobelBiz will be substantially and irreparably harmed if Defendant's foregoing infringement of the '122 patent is not enjoined. Plaintiffs do not have an adequate remedy at law.

68. NobelBiz is entitled to recover from Defendant the damages sustained as a result of Defendant's infringing acts.

69. Plaintiff demands trial by jury of all issues so triable.

**COUNT II – PATENT INFRINGEMENT OF THE '399 PATENT**

70. NobelBiz restates and incorporates by reference paragraphs 1 through 69 as if stated fully herein.

71. In violation of 35 U.S.C. § 271(a), Defendant has, literally and under the doctrine of equivalents, infringed the '399 patent and still is, literally and under the doctrine of equivalents, infringing the '399 patent, by, among other things, making, using, offering for sale, and/or selling its LocalPresence™ in the United States, and will continue to do so unless such infringing activities are enjoined by this Court.

72. Nonetheless, in violation of 35 U.S.C. § 271(b), Defendant knowingly induced infringement and possessed specific intent to encourage another's infringement of one or more claims of the '399 patent by, among other things, offering for sale, selling and/or by soliciting end users or customers to purchase and use of LocalPresence™ in the United States, and will continue to do so unless such infringing activities are enjoined by this Court.

73. Specifically, given the knowledge of the '122 patent and that the '122 and '399 patents are related, Defendant knew of or should have known about the '399 patent upon its issuance on October 22, 2013 or sometime thereafter.

74. Defendant has continued to sell and advertise its LocalPresence™ from October 22, 2013 to present.

75. Defendant had notice of the ‘399 patent as early as the filing of the amended complaint on May 21, 2014 or sometime thereafter.

76. Defendant has continued to sell and advertise its LocalPresence™ from May 21, 2014 to present.

77. Defendant admittedly “markets its [accused] Service to various customers which may include businesses that conduct outbound dialing.” Dkt No. 22, ¶ 22.

78. For example, Defendant provides and advertises to its customers the benefits of LocalPresence™ through marketing, case studies, and instructional materials. Exhibits C-E, and G-K.

79. Additionally, Defendant further offers training, wherein customers can learn or be instructed on how LocalPresence™ operates. Exhibits G and L-M.

80. By following the materials, these customers can, are intended to, and do practice one or more claims of the ‘399 patent.

81. NobelBiz will be substantially and irreparably harmed if Defendant’s foregoing infringement of the ‘399 patent is not enjoined. Plaintiffs do not have an adequate remedy at law.

82. NobelBiz is entitled to recover from Defendant the damages sustained as a result of Defendant’s infringing acts.

**JURY DEMAND**

83. Plaintiff demands trial by jury of all issues so triable.

**PRAYER FOR RELIEF**

Plaintiffs request that:

(a) Judgment be entered that Defendant has directly and indirectly infringed the '122 and '399 patents;

(b) Judgment be entered that Defendant's infringement of the '122 and '399 patents was willful;

(c) An accounting be had for the damages resulting from Defendant's infringement of the '122 and '399 patents, including, without limitation, lost profits caused by the infringing activities of Defendant, and that the damages so ascertained be trebled and awarded together with interest and costs plus expenses, and pre- and post-judgment interest;

(d) Judgment be entered that this is an exceptional case, and that NobelBiz is entitled to its reasonable attorney fees pursuant to 35 U.S.C. § 285;

(e) A permanent injunction be issued, restraining and enjoining Defendant, its officers, agents, attorneys, and employees, and those acting in privity or concert with them, from engaging in the commercial manufacture, use, offer for sale, or sale within the United States, or importation into the United States, of systems claimed in the '122 and '399 patents; and

(f) The Court award such other and further relief as the Court may deem just and proper under the circumstances.

DATED: October 28, 2014

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**CERTIFICATE OF SERVICE**

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this October 28, 2014 with a copy of this document via the Court's CM/ECF System per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ D. Jeffrey Rambin  
D. Jeffrey Rambin