

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

EDWIN LYDA,

Plaintiff,

vs.

CBS CORPORATION, and

CBS INTERACTIVE, INC.

Defendants.

Civil Action No. 14-CV-6572 (VEC)

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AND
DEMAND FOR JURY TRIAL**

NOW COMES Plaintiff, Edwin Lyda, (“Lyda”) through his attorneys, and files this First Amended Complaint for Patent Infringement and Demand for Jury Trial against Defendant CBS Corporation, (“CBS”), and Defendant CBS Interactive, Inc. (“CBS Interactive”).

PARTIES

1. Plaintiff Lyda is an individual residing in the State of Texas.
2. Defendant CBS has its headquarters at 51 West 52nd Street, New York, NY 10019-6188.
3. Defendant CBS Interactive is a wholly division of Defendant CBS, and Defendant CBS Interactive has its headquarters at 235 Second Street, San Francisco, CA 94105.

JURISDICTION AND VENUE

4. This is an action for patent infringement of two patents, United States Patent Nos. 7,434,243 (hereinafter “The ‘243 Patent”) and 7,730,506, pursuant to the laws of the United States of America as set forth in Title 35 Sections 271, at least 271(a), and 281 of the United States Code. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. Sec. 1338(a) and 28 U.S.C. Sec. 1331. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c) and 1400(b).
5. On information and belief, the Defendants are subject to this Court’s specific and general personal jurisdiction, as well as the New York Long Arm Statute, pursuant to due process.

BACKGROUND

6. According to Defendant CBS’s Annual Report filed this year dated February 14, 2014, Defendant CBS together with its consolidated subsidiaries is a mass media company with operations in many segments including entertainment and the entertainment segment is composed of many wholly owned subsidiaries including Defendant CBS Interactive. See at least pages I-1, I-2, I-5 and I-6 of the Annual Report. According to the Annual Report, Defendant CBS Interactive is the premium content provider for Defendant CBS. Defendant CBS Interactive is a wholly owned subsidiary of Defendant CBS and is under the control of Defendant CBS. From the internet web sites copyrighted by Defendant CBS Interactive and Defendant CBS, Defendant CBS owns the television program BIG BROTHER, and Defendant CBS Interactive has the responsibility to provide the content for the television show BIG BROTHER and to operate the television show BIG BROTHER. These facts show that Defendant CBS and CBS Interactive are individually responsible for the content and operations of the show BIG BROTHER: Defendant CBS Interactive for its direct control of the television program content and operation, and Defendant CBS for control over the activities

1 of Defendant CBS Interactive in connection with BIG BROTHER. BIG
2 BROTHER is a popular television show that features a group of strangers living
3 together and allows the television audience to observe the group of strangers at all
4 times so the audience can see how the strangers interact with each other and
5 sometimes how they scheme against each other. From time to time, someone from
6 the group is voted off, and eventually, a person is a winner for surviving the
7 voting process. The winners win cash prizes.

- 8 7. Sometimes, the television audience is invited to vote on certain matters such as
9 awarding a prize or an advantage to one of the people in the group. The voting by
10 the audience is accomplished several ways: By telephone, online at a web site,
11 using a cell phone app, or by text messaging. The text messaging is usually
12 limited to a specified period of time and uses a code to identify the destination.
13 The code is provided by Defendant CBS Interactive. The text message sent by a
14 person making a vote, includes a vote selection by the sender, and a code
15 identifying the sender such as a name or a set of numbers. The cell phone used by
16 the sender need not be owned by the sender. Defendant CBS Interactive provides
17 electronic equipment to receive text messages from voters. Defendant CBS
18 Interactive needs to process the received text messages for votes to determine the
19 nature of the vote by the sender, such as a vote for a person. The front end of the
20 electronic equipment receiving the text message operates like a typical cell phone
21 receiver and additional electronic equipment processes the received text message
22 to classify the vote contents of the text message. Thereafter, the votes in the text
23 messages are processed to compile them and possibly to combine them with votes
24 made using other receiving systems to produce a running accumulated vote
25 distribution. The results of all of the voting is made public and Defendant CBS
26 Interactive provides an award to the person in the group with the most votes.
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1 8. Because the show BIG BROTHER has voting during the television broadcast, it is
2 necessary for Defendant CBS Interactive to have the equipment and operations
3 for receiving text messages with votes tested prior to the “live” broadcast of BIG
4 BROTHER to identify and correct any problems. Defendant CBS and Defendant
5 CBS Interactive have informed Plaintiff Lyda that such testing operations for
6 Defendant CBS Interactive are carried out by an independent contractor.
7 Apparently, under the control of Defendant CBS Interactive.

8 9. The patents-in-suit have both method and system claims.

9 **CAUSES OF ACTION FOR PATENT INFRINGEMENT**

10 10. On October 7, 2008, the ‘243 Patent entitled “RESPONSE APPARATUS
11 METHOD AND SYSTEM”, was duly and legally issued to Edwin Lyda, as the
12 sole patentee.

13 . On June 1, 2010, the ‘506 Patent entitled “METHOD AND APPARATUS FOR
14 RESPONSE SYSTEM”, was duly and legally issued to Edwin Lyda, as the sole
15 patentee.

16 11. Plaintiff Lyda is the sole owner of both the ‘243 Patent, and the ‘506 Patent, and
17 has standing to bring this action.

18 **COUNT ONE (DEFENDANT CBS ‘243 PATENT)**

19 12. Plaintiff Lyda repeats and incorporates herein the allegations contained in
20 paragraphs 1 through 11 above.

21 13. Defendant CBS, as owner of the Defendant CBS Interactive, controls the
22 operations of the Defendant CBS Interactive, including the production of the
23 television show BIG BROTHER and similar audience interactive television
24 programs allowing choices such as voting through cell phone texting as described
25 above.

26 14. The television show BIG BROTHER features an opportunity for viewers of the
27 show to vote on certain aspects of the show using commonly available cell phones
28 to send text messages.

- 1 15. Voting by cell phones with a text message is an important feature of the BIG
2 BROTHER show as indicated by news releases and web sites owned by
3 Defendant CBS and Defendant CBS Interactive.
- 4 16. BIG BROTHER tests of its electrical systems such as audience voting using cell
5 phones to send a text messages along with the computer processing systems under
6 the control of Defendant CBS Interactive for compiling votes as well other
7 electrical system functions anticipated for conducting a major show on television
8 before a live audience.
- 9 17. The testing of text voting operations by Defendant CBS Interactive using cell
10 phones sending text messages requires the participation of people under the
11 control or direction of an independent contractor engaged by the Defendant CBS
12 Interactive to send votes using text messages using well known cell phones either
13 their own respective cell phones, or borrowed cell phones to test the electronic
14 text voting system used by Defendant CBS Interactive for its show BIG
15 BROTHER.
- 16 18. As a result of its activities in connection with the television show BIG
17 BROTHER, Defendant CBS is infringing at least method claim 8 of the '243
18 Patent by having Defendant CBS Interactive operate the show BIG BROTHER
19 and use an independent contractor in conjunction with testing the system under
20 the control of Defendant CBS Interactive to carry out each and every step of claim
21 8 of the '243 Patent.

22 **COUNT TWO (DEFENDANT CBS '243 PATENT)**

- 23 19. Plaintiff Lyda repeats and incorporates herein the allegations contained in
24 paragraphs 1 through 11 above.
- 25 20. Defendant CBS, as owner of the Defendant CBS Interactive, controls the
26 operations of the Defendant CBS Interactive, including the production of the
27 television show "BIG BROTHER" and similar audience interactive television
28 programs allowing choices such as voting through cell phone texting.

- 1 21. The television show “BIG BROTHER” features an opportunity for viewers of the
2 show to vote on certain aspects of the show using commonly available cell phones
3 to send text messages.
- 4 22. Voting by cell phones with a text message is an important feature of the “BIG
5 BROTHER” show as indicated by news releases and web sites owned by
6 Defendant CBS and Defendant CBS Interactive.
- 7 23. BIG BROTHER tests of its electrical systems such as audience voting using cell
8 phones to send a text messages along with the computer processing systems under
9 the control of Defendant CBS Interactive for compiling votes as well other
10 electrical system functions anticipated for conducting a major show on television
11 before a live audience.
- 12 24. The testing of text voting operations by Defendant CBS Interactive using cell
13 phones sending text messages requires the participation of people under the
14 control or direction of an independent contractor engaged by the Defendant CBS
15 Interactive to send votes using text messages, typically using well known cell
16 phones either their own respective cell phones, or cell phones to test the electronic
17 text voting system used by Defendant CBS Interactive for its show BIG
18 BROTHER.
- 19 25. As a result of its activities in connection with the television show BIG
20 BROTHER, Defendant CBS is infringing at least system claim 9 of the ‘243
21 Patent by having Defendant CBS Interactive operate the show BIG BROTHER
22 and use an independent contractor in conjunction with testing the system under
23 the control of Defendant CBS Interactive to include all of the subsystems in claim
24 9 of the ‘243 Patent.

25 **COUNT THREE (DEFENDANT CBS ‘506 PATENT)**

- 26 26. Plaintiff Lyda repeats and incorporates herein the allegations contained in
27 paragraphs 1 through 11 above.
- 28 27. Defendant CBS, as owner of the Defendant CBS Interactive controls the
 operations of the television show “BIG BROTHER” and similar audience

1 interactive television programs allowing choices such as voting through cell
2 phone texting.

3 28. The television show "BIG BROTHER" features an opportunity for viewers of the
4 show to vote on certain aspects of the show using commonly available cell phones
5 to send text messages.

6 29. Voting by cell phones with a text message is an important feature of the "BIG
7 BROTHER" show as indicated by news releases and web sites owned by
8 Defendant CBS and Defendant CBS Interactive.

9 30. BIG BROTHER tests of its electrical systems such as audience voting using cell
10 phones to send a text messages along with the computer processing systems under
11 the control of Defendant CBS Interactive for compiling votes as well other
12 electrical system functions anticipated for conducting a major show on television
13 before a live audience.

14 31. The testing of text voting operations by Defendant CBS Interactive using cell
15 phones sending text messages requires the participation of people under the
16 control or direction of an independent contractor engaged by the Defendant CBS
17 Interactive to send votes using text messages, typically using well known cell
18 phones either their own respective cell phones, or cell phones to test the electronic
19 text voting system used by Defendant CBS Interactive for its show BIG
20 BROTHER.

21 32. As a result of its activities in connection with the television show BIG
22 BROTHER, Defendant CBS is infringing at least method claim 1 of the '506
23 Patent by having Defendant CBS Interactive operate the show BIG BROTHER
24 and use an independent contractor in conjunction with testing the system under
25 the control of Defendant CBS Interactive to include each and every step in claim 1
26 of the '506 Patent.

COUNT FOUR (DEFENDANT CBS '506 PATENT)

33. Plaintiff Lyda repeats and incorporates herein the allegations contained in paragraphs 1 through 11 above.
34. Defendant CBS, as owner of the Defendant CBS Interactive controls the operations of the television show "BIG BROTHER" and similar audience interactive television programs allowing choices such as voting through cell phone texting.
35. The television show "BIG BROTHER" features an opportunity for viewers of the show to vote on certain aspects of the show using commonly available cell phones to send text messages.
36. Voting by cell phones with a text message is an important feature of the "BIG BROTHER" show as indicated by news releases and web sites owned by Defendant CBS and Defendant CBS Interactive.
37. BIG BROTHER tests of its electrical systems such as audience voting using cell phones to send a text messages along with the computer processing systems under the control of Defendant CBS Interactive for compiling votes as well other electrical system functions anticipated for conducting a major show on television before a live audience.
38. The testing of text voting operations by Defendant CBS Interactive using cell phones sending text messages requires the participation of people under the control or direction of an independent contractor engaged by the Defendant CBS Interactive to send votes using text messages, typically using well known cell phones either their own respective cell phones, or cell phones to test the electronic text voting system used by Defendant CBS Interactive for its show BIG BROTHER.
39. As a result of its activities in connection with the television show BIG BROTHER, Defendant CBS is infringing at least method claim 7 of the '506

1 Patent by having Defendant CBS Interactive operate the show BIG BROTHER and use
2 an independent contractor in conjunction with testing the system under the control of
3 Defendant CBS Interactive to include each and every step in claim 7 of the '506 Patent.

4 **COUNT FIVE (DEFENDANT CBS WILLFUL INFRINGEMENT)**

5 40. Plaintiff Lyda repeats and incorporates herein the allegations contained in
6 paragraphs 1 through 11 above.

7 41. On or about July 7, 2011, Defendant CBS was provided notice of the patents-in-
8 suit and informed that it was infringing the '243 and '506 patents. Defendant
9 CBS is a willful infringing because it continued its infringing activities after being
10 informed that those activities were infringing the patents-in-suit.

11 **COUNT SIX (DEFENDANT CBS INTERACTIVE '243 PATENT)**

12 42. Plaintiff Lyda repeats and incorporates herein the allegations contained in
13 paragraphs 1 through 11 above.

14 43. Defendant CBS Interactive has direct control of the production and content of the
15 television show "BIG BROTHER" and similar audience interactive television
16 programs allowing choices such as voting through cell phone texting.

17 44. The television show "BIG BROTHER" features an opportunity for viewers of the
18 show to vote on certain aspects of the show using commonly available cell phones
19 to send text messages.

20 45. Voting by cell phones with a text message is an important feature of the "BIG
21 BROTHER" show as indicated by news releases and web sites owned by
22 Defendant CBS and Defendant CBS Interactive.

23 46. BIG BROTHER tests of its electrical systems such as audience voting using cell
24 phones to send a text messages along with the computer processing systems under
25 the control of Defendant CBS Interactive for compiling votes as well other
26 electrical system functions anticipated for conducting a major show on television
27 before a live audience.
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1 47. The testing of text voting operations by Defendant CBS Interactive using cell
2 phones sending text messages requires the participation of people under the
3 control or direction of an independent contractor engaged by the Defendant CBS
4 Interactive to send votes using text messages, typically using well known cell
5 phones either their own respective cell phones, or cell phones to test the electronic
6 text voting system used by Defendant CBS Interactive for its show BIG
7 BROTHER.

8 48. As a result of its activities in connection with the television show BIG
9 BROTHER, Defendant CBS Interactive is infringing at least method claim 8 of
10 the '243 Patent by operating the show BIG BROTHER and using an independent
11 contractor in conjunction with the system under the control of Defendant CBS
12 Interactive to carry out each and every step of claim 8 of the '243 Patent.

13 **COUNT SEVEN (DEFENDANT CBS INTERACTIVE '243 PATENT)**

14 49. Plaintiff Lyda repeats and incorporates herein the allegations contained in
15 paragraphs 1 through 11 above.

16 50. Defendant CBS Interactive controls the production of the television show BIG
17 BROTHER and similar audience interactive television programs allowing choices
18 such as voting through cell phone texting as described above.

19 51. The television show BIG BROTHER features an opportunity for viewers of the
20 show to vote on certain aspects of the show using commonly available cell phones
21 to send text messages.

22 52. Voting by cell phones with a text message is an important feature of the BIG
23 BROTHER show as indicated by news releases and web sites owned by
24 Defendant CBS and Defendant CBS Interactive.

25 53. BIG BROTHER tests of its electrical systems such as audience voting using cell
26 phones to send a text messages along with the computer processing systems under
27 the control of Defendant CBS Interactive for compiling votes as well other
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1 electrical system functions anticipated for conducting a major show on television
2 before a live audience.

3 54. The testing of text voting operations by Defendant CBS Interactive using cell
4 phones sending text messages requires the participation of people under the
5 control or direction of an independent contractor engaged by the Defendant CBS
6 Interactive to send votes using text messages using well known cell phones either
7 their own respective cell phones, or borrowed cell phones to test the electronic
8 text voting system used by Defendant CBS Interactive for its show BIG
9 BROTHER.

10 55. As a result of its activities in connection with the television show BIG
11 BROTHER, Defendant CBS Interactive is infringing at least method claim 9 of
12 the '243 Patent by operating the show BIG BROTHER and using an independent
13 contractor in conjunction with testing the system under the control of Defendant
14 CBS Interactive to each and every component of claim 9 of the '243 Patent.

15 **COUNT EIGHT (DEFENDANT CBS INTERACTIVE '506 PATENT)**

16 56. Plaintiff Lyda repeats and incorporates herein the allegations contained in
17 paragraphs 1 through 11 above.

18 57. Defendant CBS Interactive the production of the television show "BIG
19 BROTHER" and similar audience interactive television programs allowing
20 choices such as voting through cell phone texting.

21 58. The television show "BIG BROTHER" features an opportunity for viewers of the
22 show to vote on certain aspects of the show using commonly available cell phones
23 to send text messages.

24 59. Voting by cell phones with a text message is an important feature of the "BIG
25 BROTHER" show as indicated by news releases and web sites owned by
26 Defendant CBS and Defendant CBS Interactive.
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- 1 60. BIG BROTHER tests of its electrical systems such as audience voting using cell
2 phones to send a text messages along with the computer processing systems under
3 the control of Defendant CBS Interactive for compiling votes as well other
4 electrical system functions anticipated for conducting a major show on television
5 before a live audience.
- 6 61. The testing of text voting operations by Defendant CBS Interactive using cell
7 phones sending text messages requires the participation of people under the
8 control or direction of an independent contractor engaged by the Defendant CBS
9 Interactive to send votes using text messages, typically using well known cell
10 phones either their own respective cell phones, or cell phones to test the electronic
11 text voting system used by Defendant CBS Interactive for its show BIG
12 BROTHER.
- 13 62. As a result of its activities in connection with the television show BIG
14 BROTHER, Defendant CBS Interactive is infringing at least method claim 1 of
15 the '506 Patent by operating the show BIG BROTHER and using an independent
16 contractor in conjunction with testing the system under the control of Defendant
17 CBS Interactive to include each and every step of claim 1 of the '506 Patent.

18 **COUNT NINE (DEFENDANT CBS INTERACTIVE '506 PATENT)**

- 19 63. Plaintiff Lyda repeats and incorporates herein the allegations contained in
20 paragraphs 1 through 11 above.
- 21 64. Defendant CBS Interactive has direct control of the production and content of the
22 television show "BIG BROTHER" and similar audience interactive television
23 programs allowing choices such as voting through cell phone texting.
- 24 65. The television show "BIG BROTHER" features an opportunity for viewers of the
25 show to vote on certain aspects of the show using commonly available cell phones
26 to send text messages.
- 27 66. Voting by cell phones with a text message is an important feature of the "BIG
28

BROTHER” show as indicated by news releases and web sites owned by Defendant CBS and Defendant CBS Interactive.

67. BIG BROTHER tests of its electrical systems such as audience voting using cell phones to send a text messages along with the computer processing systems under the control of Defendant CBS Interactive for compiling votes as well other electrical system functions anticipated for conducting a major show on television before a live audience.

68. The testing of text voting operations by Defendant CBS Interactive using cell phones sending text messages requires the participation of people under the control or direction of an independent contractor engaged by the Defendant CBS Interactive to send votes using text messages, typically using well known cell phones either their own respective cell phones, or cell phones to test the electronic text voting system used by Defendant CBS Interactive for its show BIG BROTHER.

69. As a result of its activities in connection with the television show BIG BROTHER, Defendant CBS is infringing at least method claim 7 of the ‘506 Patent by having Defendant CBS Interactive operate the show BIG BROTHER and use an independent contractor in conjunction with the system under the control of Defendant CBS Interactive to include each and every step of claim 7 of the ‘506 Patent.

COUNT TEN (DEFENDANT CBS INTERACTIVE WILLFUL INFRINGEMENT)

70. Plaintiff Lyda repeats and incorporates herein the allegations contained in paragraphs 1 through 11 above.

71. On or about July 7, 2011, Defendant CBS was provided notice of the patents-in-suit and informed that it was infringing the ‘243 and ‘506 patents. Defendant CBS is a willful infringing because it continued its infringing activities after being informed that those activities were infringing the patents-in-suit.

JURY DEMAND

72. Pursuant to Fed. R. Civ. P. 38, Plaintiff Lyda hereby demands a jury trial as to all issues in this lawsuit.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Lyda respectfully requests this Court to:

- a. enter judgment for Plaintiff Lyda on this Complaint against Defendant CBS;
- b. order that an accounting be had for the damages caused to the Plaintiff Lyda by the infringing activities of the Defendant CBS;
- c. award Plaintiff Lyda interest and costs against Defendant CBS;
- d. enter judgment for Plaintiff Lyda on this Complaint against Defendant CBS Interactive;
- e. order that an accounting be had for the damages caused to the Plaintiff Lyda by the infringing activities of the Defendant CBS Interactive;
- f. award Plaintiff Lyda interest and costs against Defendant CBS Interactive;
- g. find that Defendant CBS is a willful infringer;
- h. find that Defendant CBS Interactive is a willful infringer; and
- i. award Plaintiff Lyda such other and further relief as this Court may deem just and equitable.

THE PLAINTIFF
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