

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BETTER MOUSE COMPANY, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

CIVIL ACTION NO. 2:14-cv-1163

ORIGINAL COMPLAINT
FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff Better Mouse Company, LLC (“BMC”) files this original complaint against the above-named defendant, alleging, based on its own knowledge as to itself and its own actions, and based on information and belief as to all other matters, as follows:

PARTIES

1. BMC is a limited liability company formed under the laws of the State of Texas, with a principal place of business in Tyler, Texas.
2. Defendant Microsoft Corporation (“Microsoft”) is a corporation organized under the laws of Washington with a principal place of business in Redmond, WA. It can be served through its resident agent for service of process in Texas: Corporation Service Company; 211 E. 7th Street, Suite 620; Austin, TX 78701-3218.

JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. § 1331 and § 1338(a).

4. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, defendant has transacted business in this district and has committed acts of patent infringement in this district.

5. Defendant is subject to this Court's specific and general personal jurisdiction under due process and/or the Texas Long Arm Statute due at least to defendant's substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

KNOWLEDGE

6. This lawsuit involves, as will be further described below, infringement of U.S. Patent No. 7,532,200 ("the 200 patent").

7. Defendant has or will have knowledge of the patent-in-suit at least of the filing date and/or service date of this complaint.

8. In addition, Microsoft had knowledge of the 200 patent at least from the date the 200 patent was cited by the Patent Examiner during the prosecution of U.S. Patent No. 8,094,124 (titled "Pointing Device with Customization Options").

9. The 124 patent lists as inventors: Babak Sayyadi, Amandu [sic] Wu, Gil Manalo, Kevin Flick, Sarah J. Fueling, Michael Becker, Santosh Shetty and David M. Lane.

10. The 124 was originally assigned to Microsoft Corporation.

11. The 124's patent application was filed on August 17, 2007. During the prosecution of the patent, the Patent Examiner cited the application underlying the 200 patent in

a non-final rejection on May 24, 2010, and listed the 200 patent itself as one of the search terms in the May 20, 2010 Search History.

12. The application for the 200 patent was issued as the 200 patent in 2009. The 124 patent was issued in 2012.

13. The title of the 124 patent bears similarities to the title of the 200 patent. The title of the 200 patent is “Apparatus for Setting Multi-Stage Displacement Resolution of a Mouse.”

14. The 124 patent covers substantially similar subject matter as the 200 patent. The beginning of the patent reads “Pointing devices (such as mice) are used to interface with a computer....”

15. The 124 patent’s co-inventor, Babak Sayyadi, was involved in the prosecution of the patent.

16. Babak Sayyadi was employed by Microsoft for six years as a Product Planner and Product Line manager. Babak Sayyadi has been awarded eight patents.

17. Babak Sayyadi has knowledge of the 200 patent at least through his activities relating to the prosecution of the 124 patent.

18. By virtue of at least his position at Microsoft, Babak Sayyadi’s personal knowledge of the 200 patent should be imputed to Microsoft.

19. The 124 patent’s co-inventor “Amandu Wu” should read “Amanda Wu.”

20. Amanda Wu was involved in the prosecution of the patent.

21. Amanda Wu was employed by Microsoft in 2009, when the 200 patent issued and the prosecution of the 124 patent was ongoing. She was employed by Microsoft when the Patent Examiner cited the 200 patent application and the 200 patent.

22. Amanda Wu is currently employed by Microsoft as a Mechanical Engineer and has worked there for seven years. Amanda Wu is an inventor of at least one patent other than the 124 patent.

23. Amanda Wu has knowledge of the 200 patent at least through her activities relating to the prosecution of the 200 patent.

24. By virtue of at least her position at Microsoft, Amanda Wu's personal knowledge of the 200 patent should be imputed to Microsoft.

25. The 124 patent's co-inventor, Gil Manalo, was involved in the prosecution of the patent.

26. Gil Manalo is employed by Microsoft as a Senior Industrial Designer. Gil Manalo has been awarded five patents.

27. Gil Manalo has knowledge of the 200 patent at least through his activities relating to the prosecution of the 124 patent.

28. By virtue of at least his position at Microsoft, Gil Manalo's personal knowledge of the 200 patent should be imputed to Microsoft.

29. The 124 patent's co-inventor, Kevin Flick, was involved in the prosecution of the patent.

30. Kevin Flick is employed by Microsoft in the Program Development field. He has been awarded three patents.

31. Kevin Flick has knowledge of the 200 patent at least through his activities relating to the prosecution of the 124 patent.

32. By virtue of at least his position at Microsoft, Kevin Flick's personal knowledge of the 200 patent should be imputed to Microsoft.

33. The 124 patent's co-inventor, Sarah J. Fueling, was involved in the prosecution of the patent.

34. Sarah J. Fueling was employed by Microsoft as a Senior UX Researcher for eight years.

35. Sarah J. Fueling was employed by Microsoft in 2009, when the 200 patent issued and the prosecution of the 124 patent was ongoing. She was employed by Microsoft when the Patent Examiner cited the 200 patent application and the 200 patent.

36. Sarah J. Fueling has knowledge of the 200 patent at least through her activities relating to the prosecution of the 124 patent.

37. By virtue of at least her position at Microsoft, Sarah J. Fueling's personal knowledge of the 200 patent should be imputed to Microsoft.

38. The 124 patent's co-inventor, Michael Becker, was involved in the prosecution of the patent.

39. Michael Becker was employed by Microsoft as a Program Manager for seven years.

40. Michael Becker was employed by Microsoft in 2009, when the 200 patent issued and the prosecution of the 124 patent was ongoing. He was employed by Microsoft when the Patent Examiner cited the 200 patent application and the 200 patent.

41. Michael Becker has knowledge of the 200 patent at least through his activities relating to the prosecution of the 124 patent.

42. By virtue of at least his position at Microsoft, Michael Becker's personal knowledge of the 124 patent should be imputed to Microsoft.

43. The 124 patent's co-inventor, Santosh Shetty, was involved in the prosecution of the 124 patent.

44. Santosh Shetty is employed by Microsoft as a Senior Reliability Engineer and has worked there for eight years. Santosh Shetty is the inventor of four patents.

45. Santosh Shetty was employed by Microsoft in 2009, when the 200 patent issued and the prosecution of the 124 patent was ongoing. He was employed by Microsoft when the Patent Examiner cited the 200 patent application and the 200 patent.

46. Santosh Shetty has knowledge of the 200 patent at least through his activities relating to the prosecution of the 124 patent.

47. By virtue of at least his position at Microsoft, Santosh Shetty's personal knowledge of the 124 patent should be imputed to Microsoft.

48. The 124 patent's co-inventor, David M. Lane, was involved in the prosecution of the patent.

49. David M. Lane is employed at Microsoft as an Engineering Manager and has worked there for fifteen years. He has also worked as a Group Development Manager at Microsoft.

50. David M. Lane was employed by Microsoft in 2009, when the 200 patent issued and the prosecution of the 124 patent was ongoing. He was employed by Microsoft when the Patent Examiner cited the 200 patent application and the 200 patent.

51. David M. Lane has knowledge of the 200 patent at least through his activities relating to the prosecution of the 124 patent.

52. By virtue of at least his position at Microsoft, David M. Lane's personal knowledge of the 124 patent should be imputed to Microsoft.

53. Microsoft has knowledge of the 200 patent due to its involvement in the prosecution of the 124 patent.

54. Defendant's infringement is willful at least as of the date it first had knowledge of the patent-in-suit.

COUNT I: INFRINGEMENT OF U.S. PATENT NO. 7,532,200

55. On May 12, 2009, United States Patent No. 7,532,200 ("the 200 patent") was duly and legally issued by the United States Patent and Trademark Office for an invention titled "Apparatus for Setting Multi-Stage Displacement Resolution of a Mouse."

56. BMC is the owner of the 200 patent with all substantive rights in and to that patent, including the sole and exclusive right to prosecute this action and enforce the 200 patent against infringers, and to collect damages for all relevant times.

57. Microsoft made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale computer mice and other devices (including at least the following mouse models: Sidewinder X3) that infringed one or more claims of the 200 patent.

58. In addition, customers of Microsoft used computer mice with certain resolution-setting capabilities (including, based on information on its or other websites, at least the following models: Sidewinder X3), thus directly infringing one or more claims of the 200 patent.

59. Microsoft induced the infringement of the abovementioned customers.

60. Microsoft took active steps, directly and/or through contractual relationships with others, to cause infringement with both knowledge of the 200 patent and the specific intent to cause the abovementioned customers to use computer mice with certain resolution-setting capabilities in a manner that infringed the 200 patent. Such steps by Microsoft included, among other things, advising or directing the abovementioned customers to use computer mice with

certain resolution-setting capabilities in an infringing manner; advertising and promoting the use of computer mice with certain resolution-setting capabilities in an infringing manner; and/or distributing instructions that guide users to use the computer mice with certain resolution-setting capabilities in an infringing manner.

61. Microsoft contributed to the infringement of the abovementioned customers.

62. The infringing computer mice with certain resolution-setting capabilities used by the abovementioned customers have hardware and/or software components that are especially designed to be used with a particular resolution-setting functionality, and are especially designed to be used in an infringing way. These components in these computer mice with certain resolution-setting capabilities constitute a material part of the invention of one or more asserted claims of the 200 patent and are not staple articles of commerce suitable for substantial non-infringing use. These distinct and separate components are used only to carry out the resolution-setting functionality in an infringing way and not for any other computer mouse functionality.

63. BMC has been damaged as a result of the infringing conduct by defendant alleged above. Thus, defendant is liable to BMC in an amount that adequately compensates BMC for such infringements, 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.

64. BMC and/or its predecessors-in-interest have satisfied all statutory obligations required to collect pre-filing damages for the full period allowed by law.

JURY DEMAND

BMC hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

BMC requests that the Court find in its favor and against defendant and that the Court grant BMC the following relief:

- a. Judgment that one or more claims of the 200 patent have been infringed, either literally and/or under the doctrine of equivalents, by defendant;
- b. Judgment that defendant account for and pay to BMC all damages to and costs incurred by BMC because of defendant's infringing activities and other conduct complained of herein;
- c. That defendant's infringement be found to be willful, and that the Court award treble damages for the period of such willful infringement under 35 U.S.C. § 284;
- d. A permanent injunction enjoining defendant and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the 200 patent;
- e. Pre-judgment and post-judgment interest on the damages caused by defendant's infringing activities and other conduct complained of herein;
- f. A declaration by the Court that this an exceptional case and an award to BMC its reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- g. Other and further relief as the Court may deem just and proper under the circumstances.

Dated: December 23, 2014

Respectfully submitted,

/s/ Larry D. Thompson, Jr.

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