

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

MOTIO, INC.,

Plaintiff,

v.

BSP SOFTWARE LLC,
BRIGHTSTAR PARTNERS, INC.
and AVNET, INC.,

Defendants.

Civil Action No. 4:12-CV-00647-RAS

JURY DEMANDED

PLAINTIFF'S SECOND AMENDED COMPLAINT

Plaintiff Motio, Inc. ("Motio" or "Plaintiff"), by and through its undersigned counsel, complains of patent infringement by BSP Software LLC ("BSP"), Avnet, Inc. ("Avnet"), and BrightStar Partners, Inc. ("BrightStar") (collectively, "Defendants"), and alleges as follows:

PARTIES

1. Plaintiff Motio, Inc. is a Texas corporation with its principal place of business at 18333 Preston Road, Suite 475, Dallas, Texas 75252 (Collin County).

2. Defendant BSP Software LLC is an Illinois limited liability company with its principal place of business at 1701 West Golf Road, Suite 3-604, Rolling Meadows, Illinois 60008 (Cook County).

3. Defendant Avnet, Inc. is a New York corporation with its principal place of business located at 2211 South 47th Street, Phoenix, Arizona 85034.

4. Defendant BrightStar Partners, Inc. is an Illinois corporation with its principal place of business located at 1701 West Golf Road, Tower III, Suite 604, Rolling Meadows, Illinois 60008.

JURISDICTION AND VENUE

5. This is an action arising under the patent laws of the United States, 35 U.S.C. §§ 101 et seq. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. This Court has personal jurisdiction, both specific and general, over the Defendants by virtue of the fact that Defendants regularly conduct business and have continuous and systematic contacts within this Judicial District and because this suit arises from Defendants' infringing activities in the forum state.

7. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b).

FACTUAL BACKGROUND

8. Motio is a company that develops and sells business intelligence software solutions, including software products for enhancing and/or extending IBM Cognos business intelligence software.

9. BSP is a company that also develops and sells business intelligence software solutions, including software products for enhancing and/or extending IBM Cognos business intelligence software.

10. On October 19, 2012, Avnet acquired all of BSP's assets and assumed all BSP liabilities. Avnet now owns all rights, title and interest in and to BSP's intellectual property, including the alleged infringing software products described in this Complaint.

11. BrightStar is an IBM Cognos Performance Management consulting firm. On information and belief, BrightStar employees or representatives market and sell BSP and Avnet software products on behalf of BSP and Avnet.

12. On information and belief, representatives or employees of BSP, Avnet and BrightStar have sold and/or offered to sell software products and other services in Texas, including the Eastern District of Texas. On information and belief, Defendants have employed and currently employ one or more individuals in Texas and elsewhere for the purpose of marketing and selling BSP and Avnet software products. On information and belief, employees and representatives of

Defendants actively participate in Cognos User Groups in Texas for the purpose of marketing and selling BSP and Avnet software products.

13. On October 9, 2012, United States Patent No. 8,285,678 (“the ‘678 Patent”) entitled “Continuous Integration of Business Intelligence Software” was duly and legally issued by the United States Patent and Trademark Office, with J. Lynn Moore, Jr. and Lance W. Hankins as inventors. Plaintiff Motio is the owner by assignment of all rights, title, and interest in and to the ‘678 Patent. Exhibit A is a true and correct copy of the ‘678 Patent.

14. Defendants have infringed (literally and/or under the doctrine of equivalents), and continue to infringe, Motio’s ‘678 Patent by making, using, importing, selling, and/or offering to sell products covered by one or more claims of the ‘678 Patent – or by performing any method claimed therein – within the United States, and/or by contributing to or inducing such infringement.

CLAIMS

COUNT I – PATENT INFRINGEMENT

15. Motio incorporates by reference the preceding paragraphs as if fully set forth herein.

16. Defendants are providing, installing, making, using and/or selling BSP’s Integrated Version Control (“IVC”) and/or Integrated Control Suite (“ICS”) products within the United States.

17. Defendants have infringed (literally and/or under the doctrine of equivalents), and are continuing to infringe, one or more claims of the ‘678 Patent by providing, installing, making, using and/or selling the IVC and/or ICS products within the United States, and/or by contributing to or inducing such infringement by others by providing, installing, making, using, and/or selling the IVC and/or ICS products within the United States.

18. Defendants’ infringement of the ‘678 Patent is and has been willful, has caused and will continue to cause Motio to suffer substantial damages, and has caused and will continue

to cause Motio to suffer irreparable harm for which there is no adequate remedy at law unless enjoined by the Court.

DEMAND FOR JURY TRIAL

19. Plaintiff Motio requests a jury to hear this action.

PRAYER FOR RELIEF

20. For these reasons, Plaintiff Motio respectfully requests that this Court enter judgment in its favor and grant the following relief:

- a. Adjudge that Defendants BSP, Avnet and BrightStar have directly infringed the asserted claims of the '678 Patent, contributorily infringed the asserted claims of the '678 Patent, and/or induced infringement of the asserted claims of the '678 Patent;
- b. Enter an order preliminarily and permanently enjoining Defendants BSP, Avnet and BrightStar from any further acts of infringement of the '678 Patent;
- c. Adjudge that Defendants BSP, Avnet and BrightStar's infringement has been willful;
- d. Award Plaintiff Motio 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, and treble damages for willful infringement as provided by 35 U.S.C. § 284;
- e. Enter an order awarding Plaintiff Motio pre- and post-judgment interest on damages awarded and its costs (including all disbursements) under 35 U.S.C. § 284; and

f. Award such other relief as the Court may deem appropriate and just.

Dated: March 10, 2015

Respectfully Submitted,

/s/ Jeffrey M. Drake

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Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on March 10, 2015, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Kelly J. Kubasta

Kelly J. Kubasta