

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

MXGO TECHNOLOGIES, INC.,

Plaintiff,

v.

SOLARWINDS, INC. AND SOLARWINDS
WORLDWIDE, LLC,

Defendants.

Civil Action No. 2:15-cv-01385

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which MXGO Technologies, Inc. (“MXGO”), by and through its undersigned counsel, submits this Original Complaint against SolarWinds, Inc. and SolarWinds Worldwide, LLC, as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendants’ infringement of United States Patent No. 8,463,862 (the “‘862 Patent” or the “Patent-in-Suit”).

THE PARTIES

2. Plaintiff, MXGO Technologies, Inc., is a California company with its place of business at 3633 Vireo Ave., Santa Clara, California 95051.

3. On information and belief, Defendants SolarWinds, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 7171 Southwest Parkway, Building 400, Austin, Texas 78735.

4. On information and belief, Defendants SolarWinds Worldwide, LLC, is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 7171 Southwest Parkway, Building 400, Austin, Texas 78735.

JURISDICTION AND VENUE

5. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. The Court has personal jurisdiction over Defendants, including because Defendants have a principal place of business in the State of Texas. Additionally, Defendants have minimum contacts within the State of Texas; Defendants have purposefully availed themselves of the privileges of conducting business in the State of Texas; Defendants regularly conduct business within the State of Texas; and Plaintiff's cause of action arises directly from Defendants' business contacts and other activities in the State of Texas. Further, this Court has general jurisdiction over Defendants, including due to their continuous and systematic contacts with the State of Texas.

7. More specifically, on information and belief, Defendants are subject to the Court's jurisdiction because Defendants have committed patent infringement in the State of Texas, have induced others to commit infringement in the State of Texas, and/or have contributed to patent infringement in the State of Texas. Pursuant to 35 U.S.C. § 271, Defendants infringe, directly and/or through intermediaries, the Patent-in-Suit by, without authority, at least their making, using, offering for sale, selling, practicing, and/or hosting interactive software that comprises infringing methods, including those accused methods described herein, which are at least used in and/or accessible in the State of Texas. Further, on information and belief, Defendants solicit customers/users in the State of Texas, at least through Defendants' interactive website which is at least used in and/or accessible in the State of Texas, and have customers/users who are residents of the State of Texas and who purchase, acquire, and/or use Defendants' infringing software in the State of Texas.

8. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b), including because Defendants have minimum contacts within this District; Defendants have purposefully availed themselves of the privileges of conducting business in this District; Defendants regularly conduct business within this District; and Plaintiff's cause of action arises directly from Defendants' business contacts and other activities in this District. Further, this Court has personal jurisdiction over Defendants, including due to their continuous and systematic contacts with this District, and Defendants are deemed to reside in this District.

9. More specifically, venue is proper at least because Defendants is deemed to reside in this District, and Defendants have committed acts of infringement in this District. On information and belief, Defendants have committed patent infringement in this District, have induced others to commit infringement in this District, and/or have contributed to patent infringement in District. Pursuant to 35 U.S.C. § 271, Defendants infringe, directly and/or through intermediaries, the Patent-in-Suit by, without authority, at least their making, using, offering for sale, selling, practicing, and/or hosting interactive software that comprises infringing methods, including those accused methods described herein, which are at least used in and/or accessible in this District. Further, on information and belief, Defendants solicit customers/users in this District, at least through Defendants' interactive website which is at least used in and/or accessible in this District, and has customers/users who are residents of this District and who purchase, acquire, and/or use Defendants' infringing software in this District.

COUNT I - INFRINGEMENT OF U.S. PATENT NO. 8,463,862

10. Plaintiff refers to and incorporates herein the allegations of Paragraphs 1-9 above.

11. The '862 Patent, entitled "Methods and Systems for Dispatching Messages to Mobile Devices," duly and legally issued by the United States Patent and Trademark Office ("USPTO")

on June 11, 2013 after a full and fair examination. Plaintiff is the assignee of the '862 Patent and has standing to bring this lawsuit, including the right to recover damages for past, present, and future infringement of the '862 patent.

12. The claims of the '862 Patent cover, *inter alia*, a computer-implemented method of dispatching an electronic message from a sender, the method comprising: maintaining a database with dispatching rules establishing preferences for message routing, at least one dispatching rule operable to distinguish between a server destination associated with a recipient and specified by a first destination address and a mobile-phone destination specified by a second destination address; and determining whether the recipient responds to the message directed to the server destination specified by the first destination address and, if the recipient fails to respond to the message via the server destination, reformatting the message and sending the reformatted message to the mobile-phone destination nation address.

13. On information and belief, Defendants have infringed and are now infringing, literally, jointly, and/or equivalently, the '862 Patent in this judicial district, the State of Texas, and elsewhere in the United States, in violation of 35 U.S.C. § 271 through actions comprising the making, using, offering for sale, selling, practicing, and/or hosting, without authority from Plaintiff, software and/or methods that provide, *inter alia*, a computer-implemented method of dispatching an electronic message from a sender. Specifically, Defendants provide software and/or methods for maintaining a database with dispatching rules establishing preferences for message routing, at least one dispatching rule operable to distinguish between a server destination associated with a recipient and specified by a first destination address and a mobile-phone destination specified by a second destination address; and determining whether the recipient responds to the message directed to the server destination specified by the first destination address

and, if the recipient fails to respond to the message via the server destination, reformatting the message and sending the reformatted message to the mobile-phone destination nation address. On information and belief, Defendants infringe the '862 Patent by and through at least their making, using, offering for sale, selling, practicing, and/or hosting, software and/or methods comprising at least the Alert Central system (including as found and described at www.solarwinds.com/alertcentral).

14. Additionally, or in the alternative, upon information and belief, Defendants have been and now are indirectly infringing the '862 Patent in violation of 35 U.S.C. 271 by way of intentionally inducing infringement of the '862 Patent in this District, the State of Texas, and elsewhere in the United States, including by actions comprising at least intentionally aiding or abetting at least its customers and other end users to purchase and/or use said infringing software and/or methods described herein. Upon information and belief, Defendants have been and now are asking or inducing at least their customers and other end users to infringe and/or offering for sale and/or selling the infringing software and/or methods described herein with advertising or instructions about an infringing use, such induced infringement has occurred at least since Defendants became aware of the '862 Patent, which, at a minimum, occurred at least through the filing of this lawsuit, and Defendants' inducement of infringement comprises Defendants' knowledge that the induced acts constitute patent infringement.

15. Additionally, or in the alternative, upon information and belief, Defendants have been and now are indirectly infringing the '862 Patent in violation of 35 U.S.C. 271 by way of contributing to infringement of the '862 Patent in this District, the State of Texas, and elsewhere in the United States, including by actions comprising at least contributing to the use, practicing, and/or hosting of said infringing software and/or methods described herein by their customers and other end users.

Upon information and belief, Defendants have been and now are offering for sale and/or selling at least a material or apparatus, constituting a material part of the invention, for use in practicing the '862 Patent, and such contributory infringement involves Defendants' knowledge that such software and/or methods are especially made or especially adapted for use in an infringement of the '862 Patent and not a staple article or commodity of commerce suitable for substantial non-infringing use.

16. On information and belief, Defendants have had at least constructive notice of the '862 Patent pursuant to the Patent Act. Plaintiff reserves the right to take discovery regarding Defendants' first actual notice of the '862 Patent.

17. Each of Defendants' aforesaid activities has been without authority and/or license from Plaintiff. Such activities constitute Defendants' infringement of the '862 patent by at least Defendants' making, using, offering for sale, selling, practicing, and/or hosting at least the software and/or methods described herein, that infringe, either directly or indirectly, the patented invention, and Defendants will continue to do so unless enjoined by the Court.

DAMAGES

18. Plaintiff refers to and incorporates herein the allegations of Paragraphs 1-17 above.

19. Defendants' infringement of Plaintiff's exclusive rights under the Patent-in-Suit will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court under 35 U.S.C. § 283.

20. By way of its infringing activities, Defendants have caused and continue to cause Plaintiff to suffer damages, and Plaintiff is entitled to recover from Defendants damages in an amount to be determined at trial, but no less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

21. On information and belief, this is an exceptional case entitling Plaintiff to recover its attorneys' fees and costs pursuant to 35 U.S.C. § 285.

22. To the extent that facts learned during the pendency of this case show that Defendants' infringement is, or has been, willful, Plaintiff reserves the right to amend this Complaint accordingly, and to request such a finding at the time of trial.

DEMAND FOR JURY TRIAL

23. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court find in its favor and against Defendants, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the Patent-in-Suit has been directly and/or indirectly infringed, either literally, jointly, and/or under the doctrine of equivalents, by Defendants;
- B. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendants, and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith, from further acts of infringement with respect to the claims of the Patent-in-Suit;
- C. An award to Plaintiff of damages adequate to compensate Plaintiff for Defendants' acts of infringement, together with pre-judgment and post-judgment interest pursuant to 35 U.S.C. § 284;
- D. That this Court declare Defendants' infringement has been, and continues to be, willful, including that Defendants acted to infringe the Patent-in-Suit despite an objectively high

likelihood that their actions constituted infringement of a valid patent and, accordingly, award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284;

- E. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- F. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, fees, and prejudgment and post-judgment interest for Defendants' infringement of the Patent-in-Suit as provided under 35 U.S.C. §§ 284 and/or 285; and
- G. Any and all further relief for which Plaintiff may show itself justly entitled that this Court deems just and proper.

August 3, 2015

Respectfully submitted,

/s/ Stephen F. Schlather

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