

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

Oberalis LLC, Plaintiff,

v.

Orchard Brands Corp., Defendant.

Civil Action No. 2:15-cv-00982-JRG

JURY TRIAL DEMANDED

PATENT CASE

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Oberalis LLC (“Oberalis” or “Plaintiff”) makes the following allegations against Orchard Brands Corp. (“Orchard” or “Defendant”):

PARTIES

1. Plaintiff Oberalis is a limited liability company organized under the laws of the State of Texas and has its principal place of business at 5900 S. Lake Forest Dr., Ste. 300, McKinney, TX 75070-2238.

2. Defendant Orchard is a corporation organized and existing under the laws of the State of Delaware, with a principal place of business located at 35 Village Rd., Ste. 500, Middleton, MA 01949-1236. Defendant may be served via its registered agent for service of process: Corporation Service Company, 2711 Centerville Rd., Suite 400, Wilmington, DE 19808.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its 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.

5. Venue is proper in this district under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b). On information and belief, Defendant has transacted business in this district, and has performed at least a portion of the infringements alleged herein in this district.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 5,911,140

6. Plaintiff Oberalis is the owner by assignment of United States Patent No. 5,911,140 ("the 140 Patent") titled "Method of Ordering Document Clusters Given Some Knowledge of User Interests." The '140 Patent was duly issued by the United States Patent and Trademark Office on June 8, 1999. A true and correct copy of the '140 Patent is attached as Exhibit A.

7. On December 14, 1995, John W. Tukey and Jan O. Pedersen (collectively, "Applicants") filed patent application no. 08/572,399 ("the '399 Application") with the United States Patent and Trademark Office ("the PTO"). The '399 Application was duly vetted by patent examiners, Thomas G. Black and Greta L. Robinson, at the PTO. The PTO vetting included reviewing the '399 Application for compliance with 35 U.S.C. § 101. After the PTO completed its vetting, the PTO found that the '399 Application complied with all requirements for a United States patent. The PTO issued the '399 Application as the '140 Patent on June 8, 1999.

8. The PTO classified the '140 Patent in international class G06F 17/30 and U.S. class 707/5. These classes are for inventions related to electrical digital data processing technologies. Neither international class G06F 17/30 nor U.S. class 707/5 are related to business methods.

9. Pursuant to 35 U.S.C. § 282, the '140 Patent is presumed valid.

10. The '140 Patent is a technical patent. Accordingly, a person of ordinary skill in the art for the '140 Patent would have a bachelor's degree in computer science, computer engineering or equivalent work experience, and at least four years of experience in computer systems and applications design and development.

11. The '140 Patent and its claims, as understood by a person of ordinary skill in the art having reviewed the '140 Patent and its file history (a "PHOSITA"), are directed at to solving problems in the art of computerized searching and organization of documents. More particularly, the '140 Patent and its claims, as understood by a PHOSITA, relate to computerized systems that implement technical functionality that enables the organization and presentation of documents. When the invention of the '140 Patent is implemented, voluminous information is transformed into a more usable form.

12. A PHOSITA would understand that the claims of the '140 Patent require the use of a specially programmed computer(s) implementing the invention patented in the '140 Patent. For example, the PHOSITA would generally understand that practicing the '140 Patent requires a specially programmed computer with a processor, a specially programmed database, and a specially programmed user interface. The user interface would be specially programmed to receive a constraint from a user and pass it to the processor. The process would run specialized software that identifies documents matching the constraint. The process would further order the

documents into clusters and then determine a score for each cluster based upon how many documents in the cluster satisfy the constraint. Finally, the clusters are presented to a user by the user interface.

13. For example, the '140 Patent discloses a preferred, technical algorithm for a PHOSITA to implement the invention of the '140 Patent, e.g.: $s(C_i) = \sum I(d)$ where $d \in C_i$. (col. 5, l. 38).

14. In order for a PHOSITA to practice the invention of the '140 Patent, the PHOSITA would have to, *inter alia*, implement the above algorithms using software. Such an implementation would transform a generic computer(s) into a specially programmed computer(s). Because such a specially programmed computer(s) provides functionality not present in a generic computer, a PHOSITA would understand that a specially programmed computer(s) in accordance with the invention of the '140 Patent is a technological improvement over a generic computer.

15. Further, a PHOSITA would understand that the claims of the '140 patent could not be practiced by human interaction alone, nor merely using a generic computer.

16. Still further, a PHOSITA would understand that there are alternate ways of retrieving and organizing documents that are not covered by the claims of the '140 Patent.

17. Upon information and belief, Defendant makes, uses, operates, and makes available to the public, directly or through intermediaries, a website and related systems that are, and were during the term of the '140 Patent, accessible to the public via the URL at, for example, <http://appleseeds.blair.com/home.jsp> ("the Accused Instrumentality").

18. Upon information and belief, the Accused Instrumentality performs the computerized method of browsing a corpus of documents using a processor and a memory

coupled to the processor, the processor implementing the method by executing instructions stored in the memory, the method comprising the steps of: a) identifying each document of the corpus that satisfies a constraint supplied by a user of the computer; b) ordering the corpus into a plurality of clusters, each cluster including at least one document; c) determining a score for each cluster based upon how many documents in the cluster satisfy the constraint; and d) presenting the clusters to the computer user based upon cluster scores.

19. Upon information and belief, Defendant has infringed the '140 Patent during its term in the State of Texas, in this district, and elsewhere in the United States, by, among other things, directly or through intermediaries, making, using, operating, and making available to the public the Accused Instrumentality that performed the methods and/or used the systems covered by at least claim 11 of the '140 Patent to the injury of Plaintiff. Defendant has directly infringed, literally and/or under the doctrine of equivalents, the '140 Patent during the term of the '140 Patent. Defendant and is thus liable for infringement of the '140 Patent pursuant to 35 U.S.C. § 271.

20. Defendant has had actual knowledge of the '140 Patent since at least the filing of the original complaint in this action.

21. On information and belief, Defendant has and continues to indirectly infringe one or more claims of the '140 Patent by inducing others (e.g., its employees, customers, and end-users) to directly infringe in violation of 35 U.S.C. § 271(b) since at least the filing of the original complaint in this action.

22. On information and belief, Defendant has induced others and continues to induce others, including but not limited to Defendant's employees, customers, and end-users, to infringe the '140 Patent in violation of 35 U.S.C. § 271(b) by taking active steps to encourage and

facilitate direct infringement by others with knowledge of that infringement, such as, upon information and belief, by, among other things, directly or through intermediaries, making, using, operating, and making available to the public the Accused Instrumentality that performs the method covered by at least claim 11 of the '140 Patent to when used as intended by Defendant's employees, customers, and end-users. Defendant's employees, customers, and end-users who use the Accused Instrumentality directly infringe the claims of the '140 Patent. Since at least the filing of the original complaint in this action, Defendant has had actual knowledge of the '140 Patent and has known that the use the Accused Instrumentality by its employees, customers, and end-users constituted direct infringement of the '140 Patent. Despite Defendant's actual knowledge of the '140 Patent and the knowledge that its employees, customers, and end-users infringed, Defendant continued to, and still continues to, actively encourage, assist, induce, aid, and abet its employees, customers, and end-users to directly infringe by using the Accused Instrumentality that is covered by one or more claims of the '140 Patent.

23. On information and belief, even though Defendant has been aware of the '140 Patent and that its employees, customers, and end-users infringe the '140 Patent since at least the filing of the original complaint in this litigation, to date Defendant has neither made any changes to the functionality, operations, marketing, sales, technical support, etc. of the Accused Instrumentality to avoid infringing the '140 Patent, nor has Defendant informed its employees, customers, or end-users how to avoid infringing the '140 Patent. On information and belief, Defendant itself is unaware of any legal or factual basis that its actions solely, or in combination with the actions of its employees, customers, and end-users, do not constitute direct or indirect infringement of the '140 Patent. To date, on information and belief, Defendant has not obtained or requested any opinion of counsel relating to the validity, scope, interpretation, construction,

enforceability, unenforceability, or the infringement or potential infringement of any claim of the '140 Patent.

24. As such, on information and belief, despite the information Defendant gleaned from the original complaint in this action, Defendant continues to specifically intend for and encourage its employees, customers, and end-users to use the Accused Instrumentality in a manner that infringe the claims of the '140 Patent. In addition, since at least the filing of the original complaint in this action, on information and belief, Defendant has deliberately avoided taking any actions (e.g., obtaining opinion of counsel, designing around, or providing notice to its customer) to avoid confirming that its actions continue to specifically encourage its customers and end-users to use the Accused Instrumentality in a manner that infringe the claims of the '140 Patent.

25. Defendant's actions of, *inter alia*, making, using, operating, and making available the Accused Instrumentality patented under the '140 Patent constitute an objectively high likelihood of infringement of the '140 Patent, which was duly issued by the United States Patent and Trademark Office and is presumed valid. Since at least the filing of the original complaint, Defendant is aware that there is an objectively high likelihood that its actions constituted, and continue to constitute, infringement of the '140 Patent and that the '140 Patent is valid. Despite Defendant's knowledge of that risk, on information and belief, Defendant has not made any changes to the relevant operation of its products and/or services and has not provided its employees, users, and/or customers with instructions on how to avoid infringement of the '140 Patent. Instead, Defendant has continued to, and still is continuing to, among other things, make, use, operate, and make available to the public the Accused Instrumentality that is patented under the '140 Patent. As such, Defendant willfully, wantonly and deliberately infringed and is

infringing the '140 Patent in disregard of Plaintiff's rights.

26. As a result of Defendant's infringement of the '140 Patent, Plaintiff has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for Defendant's infringement, but in no event less than a reasonable royalty for the use made of the invention by Defendant, together with interest and costs as fixed by the Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Oberalis respectfully requests that this Court enter:

27. A judgment in favor of Plaintiff that Defendant has infringed, either literally and/or under the doctrine of equivalents, the '140 Patent;

28. A judgment that Defendant willfully infringed the '140 Patent;

29. A judgment and order for treble damages pursuant to 35 U.S.C. § 284;

30. A judgment and order requiring Defendant to pay to Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '140 Patent as provided under 35 U.S.C. § 284;

31. A judgment and order that this case is exceptional and requiring Defendant to pay Plaintiff reasonable experts' fees and attorneys' fees pursuant to 35 U.S.C. § 285; and

32. Any and all other relief as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff Oberalis, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

DATED August 10, 2015.

Respectfully submitted,

/s/ Jaspal S. Hare

By: _____

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