

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

GENAVILLE LLC,

Plaintiff,

v.

AT&T INC.,

Defendant.

**No. 2:15-cv-863-JRG-RSP
LEAD CASE**

JURY TRIAL DEMANDED

THE DRESS BARN INC.,

Defendant.

**No. 5:15-cv-79-JRG-RSP
CONSOLIDATED**

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Genaville LLC files its First Amended Complaint for Patent Infringement as follows:

THE PARTIES

1. Genaville LLC is a Texas limited liability company with a principal office at 1400 Preston Road, Suite 478, Plano, Texas 75093.
2. On information and belief, Defendant The Dress Barn, Inc. (“Defendant”) is a Connecticut corporation with a principal office at 30 Dunnigan Drive, Suffern, New York 10901.

JURISDICTION AND VENUE

3. This action arises under the Patent Act, 35 U.S.C. § 1, *et seq.*
4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
5. This Court has personal jurisdiction over Defendant because at least a portion of the infringements alleged herein occurred in this District; and Defendant regularly does or solicits business, engages in other persistent courses of conduct, or derives revenue from goods

and services provided to individuals in this District through its electronic commerce website:

<http://www.dressbarn.com/>.

6. Venue is proper in this District under §§ 1391(b), (c), and 1400(b).

THE PATENT-IN-SUIT

7. Plaintiff Genaville is the owner by assignment of United States Patent No. 5,999,927 (“the 927 Patent”) titled “Method and Apparatus for Information Access Employing Overlapping Clusters.” The 927 Patent was duly issued by the United States Patent and Trademark Office (“the PTO”) on December 7, 1999. A true and correct copy of the 927 Patent is attached as Exhibit A.

8. On April 24, 1998, inventors John W. Tukey and Jan O. Pedersen filed divisional patent application no. 09/065,828 (“the 828 Application”) with the United States Patent and Trademark Office (“the PTO”). The 828 Application was duly vetted by patent examiner, Paul R. Lintz, at the PTO. The PTO vetting included reviewing the 828 Application for compliance with 35 U.S.C. § 101. After the PTO completed its vetting, the PTO found that the 828 Application complied with all statutory requirements for a United States patent and issued it.

9. The 927 Patent is presumed valid under 35 U.S.C. § 282, which may be overcome only with clear and convincing evidence under Supreme Court precedent.

10. The PTO classified the 927 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, which are wholly unrelated to business methods.

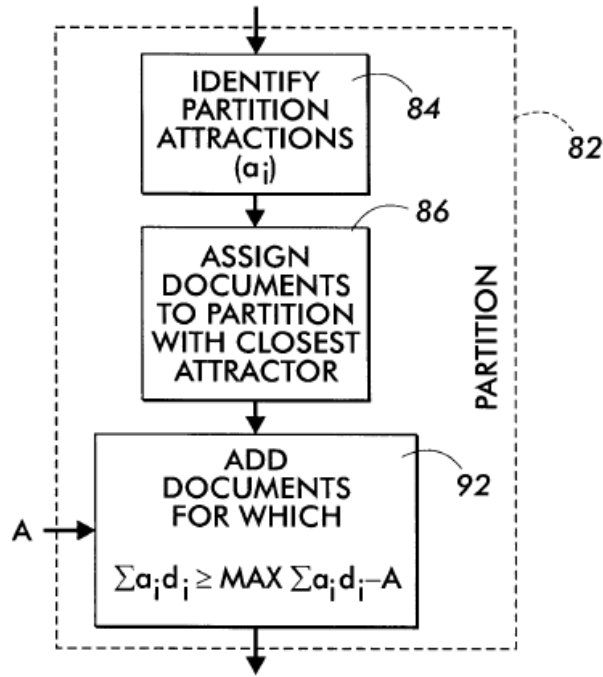
11. The 927 Patent is a technical patent. Accordingly, a person of ordinary skill in the art (“a POSITA”) for the 927 Patent would at a minimum have a bachelor’s degree in computer science, computer or electrical engineering, or equivalent work experience with at least four years of experience in computer systems and applications design and development.

12. The 927 Patent and its claims, as understood by a POSITA having reviewed the 927 Patent and its file history, are directed at solving problems in the art of computerized searching and organization of documents. More particularly, the 927 Patent and its claims, as

understood by a POSITA, relate to computerized systems that implement technical functionality that enables the organization and presentation of documents. When the invention of the 927 Patent is implemented, a voluminous, scattered, unorganized corpus of documents is organized into a manageable, understandable, readable form.

13. A POSITA would understand that the claims of the 927 Patent require the use of a specially programmed computer implementing the invention patented in the 927 Patent. For example, a POSITA would generally understand that practicing the 927 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 query from a user and pass it to the processor. The processor would run specialized software that structures unclustered documents into a plurality of document clusters, wherein at least two of the plurality of document clusters overlap and contain at least one common document. The processor then summarizes the plurality of document clusters, generates summary data for the plurality of document clusters, and displays the summary data with a user interface.

14. For example, the 927 Patent discloses a technical algorithm for a POSITA to implement the invention of the 927 Patent when preparing, in response to a query, an initial structuring of a corpus of unclustered documents into a plurality of document clusters (*see* Fig. 4):



15. Implementing this algorithm requires transforming a generic computer into a specially programmed computer with specialized computer software. Because such a specially programmed computer provides functionality not present in a generic computer, a POSITA would understand that such a computer programmed according to the invention of the 927 Patent is a technological improvement over a generic computer.

16. A POSITA would understand that the claims of the 927 Patent could not be practiced by human interaction alone, nor merely using a generic computer.

17. A POSITA would understand that there are alternate ways of identifying, structuring, and organizing documents that are not covered by the claims of the 927 Patent and that the claims of the 927 Patent do not preempt all possible ways of identifying, structuring, and organizing documents.

18. A POSITA knows that to understand the claimed invention fully in view of the patent specification and prosecution history that at least the following claim terms and their equivalents should be construed: “initial structuring,” “unclustered documents,” “a plurality of document clusters,” and “summary data for said document clusters.” Courts are encouraged to construe claim terms to preserve a patent’s validity when possible to fulfill the statutory presumption of validity under 35 U.S.C. § 282.

COUNT I
DIRECT AND INDUCED INFRINGEMENT OF U.S. PATENT NO. 5,999,140
UNDER 35 U.S.C. §§ 271(a) & (b)

19. Genaville incorporates by reference each of its allegations in paragraphs 1 to 18.

20. Without license or authorization, Defendant is directly infringing, literally or under the doctrine of equivalents, one or more claims of the 927 Patent under 35 U.S.C. § 271(a) by, among other things, making, using, offering for sale, or selling within this District and elsewhere in the United States a document browsing system for use with a corpus of unclustered documents stored in a computer system, the document browsing system comprising: program memory for storing executable program code therein; a processor, operating in response to the executable program stored in said program memory, for automatically preparing, in response to a query, an initial structuring of the corpus of unclustered documents into a plurality of document clusters, wherein at least two of the plurality of document clusters overlap and contain at least one common document therebetween; data memory for storing data identifying the documents associated with each of the plurality of document clusters; memory access means for accessing the data memory, and said processor summarizing the plurality of document clusters and generating summary data for said document clusters; and a user interface for displaying the summary data. Such a system is an integral part of Defendant's electronic commerce website, which its employees, customers and others use to search for and purchase items on its website.

21. Defendant has had actual knowledge of the 927 Patent since at least as early as the date it was served a copy of the original complaint in this case. And at least as early as that date, Defendant knew or intentionally avoided learning that it was inducing infringement of one or more claims of the 927 Patent.

22. Upon information and belief, during the term of the 927 Patent, Defendant has made, used, operated, and made available to the public, directly or through intermediaries, its electronic commerce website: <http://www.dressbarn.com/> ("the Accused Instrumentality").

23. Upon information and belief, the Accused Instrumentality implements a document browsing system for use with a corpus of unclustered documents stored in a computer system, the document browsing system comprising: program memory for storing executable program code therein; a processor, operating in response to the executable program stored in said program memory, for automatically preparing, in response to a query, an initial structuring of the corpus of unclustered documents into a plurality of document clusters, wherein at least two of the plurality of document clusters overlap and contain at least one common document therebetween; data memory for storing data identifying the documents associated with each of the plurality of document clusters; memory access means for accessing the data memory and said processor summarizing the plurality of document clusters and generating summary data for said document clusters; and a user interface for displaying the summary data.

24. Upon information and belief, Defendant has directly infringed the 927 Patent under 35 U.S.C. § 271(a), literally or under the doctrine of equivalents, 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 implements a system according to at least claim 8 of the 927 Patent.

25. Defendant has had actual knowledge of the 927 Patent since at least the filing date of the original complaint in this case.

26. On information and belief, Defendant has induced others and continues to induce others under 35 U.S.C. § 271(b) to directly infringe the 927 Patent by taking active steps to encourage and facilitate the direct infringement by others, including but not limited to Defendant's employees, customers, and end-users, with knowledge of that infringement by making, using, operating, and making available to the public, directly or through intermediaries, the Accused Instrumentality that implements a system according to at least claim 8 of the 927 Patent. Defendant's employees, customers, and end-users directly infringe the claims of the 927 Patent through their use of the Accused Instrumentality.

27. Since at least the filing date of the original complaint in this case, Defendant has had actual knowledge of the 927 Patent and has known that the use the Accused Instrumentality by its employees, customers, and end-users directly infringe the 927 Patent. Despite Defendant's actual knowledge of the 927 Patent and the knowledge that its employees, customers, and end-users infringe, Defendant continues to actively encourage, assist, induce, aid, and abet its employees, customers, and end-users to directly infringe, whom use the Accused Instrumentality that is covered by one or more claims of the 927 Patent.

28. On information and belief, even though Defendant has been aware of the 927 Patent and that its employees, customers, and end-users infringe the 927 Patent since at least the filing date of the original complaint in this case, Defendant has not made any changes to the functionality, operations, marketing, sales, or technical support for the Accused Instrumentality to avoid infringing the 927 Patent either directly or inducing infringement; nor has Defendant informed its employees, customers, or end-users how to avoid directly infringing the 927 Patent.

29. On information and belief, despite the information Defendant gleaned from the original complaint in this case, Defendant intentionally continues to make, use, operate, and make available to the public the Accused Instrumentality in a manner that directly infringes one or more claims of the 927 Patent.

30. On information and belief, despite the information Defendant gleaned from the original complaint in this action, Defendant specifically intends and continues to induce its employees, customers, and end-users to use the Accused Instrumentality in a manner that directly infringes one or more claims of the 927 Patent.

31. Since at least the filing date of the original complaint in this case, Defendant is aware that there is an objectively high likelihood that its actions constitute direct and induced infringement of a valid patent. As such, Defendant is willfully, wantonly and deliberately infringing the 927 Patent.

32. As a result of Defendant's willful infringement of the 927 Patent, Plaintiff has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate it 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 this Court.

PRAYER FOR RELIEF

Genaville seeks the following relief from this Court:

- A. Judgment that Defendant has directly infringed and induced infringement of the 927 Patent literally or under the doctrine of equivalents;
- B. An accounting of all infringing acts through the time of judgment;
- C. An award of damages in the form of at least a reasonable royalty for Defendant's past and future infringement of the 927 Patent through the time of judgment, together with pre- and post-judgment interest and costs under 35 U.S.C. § 284;
- D. A judgment that Defendant willfully infringed the 927 Patent;
- E. A judgment and order for treble damages under 35 U.S.C. § 284;
- F. Judgment that this case is exceptional and an award of Genaville's reasonable attorneys' fees and costs under 35 U.S.C. § 285; and
- G. An award to Genaville of such further relief at law or in equity that this Court deems just and proper.

JURY TRIAL DEMANDED

Plaintiff Genaville demands a trial by jury on all claims and issues so triable.

Dated: November 2, 2015

Respectfully submitted,

/s/ Peter J. Corcoran, III

Peter J. Corcoran, III – Lead Attorney

Texas State Bar No. 24080038

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Counsel for Plaintiff

Genaville LLC

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record whom have consented to electronic service were served with a copy of this document under this Court's CM/ECF system and local rules on November 2, 2015.



Peter J. Corcoran, III