

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

VENADIUM LLC,

Plaintiff,

v.

ACER AMERICA CORP.,

Defendant.

Civil Action No. 5:15-cv-114-RWS

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Venadium LLC files its First Amended Complaint for Patent Infringement based on its knowledge as to itself and based on information and belief as to all other matters as follows:

THE PARTIES

1. Venadium LLC is a Texas limited liability company with a principal office at 3000 Custer Road, Suite 270-219, Plano, TX 75075.

2. Upon information and belief, Defendant Acer America Corporation (“Defendant”) is a California corporation with a principal office at 333 West San Carlos Street, Suite 1500, San Jose, CA 95110. Defendant may be served with process through its registered agent, C T Corporation System, 818 West Seventh Street, Los Angeles, CA 90017.

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.

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

THE PATENT-IN-SUIT

7. On December 11, 2001, the U.S. Patent and Trademark Office duly and lawfully issued U.S. Patent No. 6,330,549 (the “549 patent”), entitled “Protected Shareware.” Attached at Exhibit A is a true and correct copy of U.S. Patent No. 6,330,549.

8. Venadium is the owner and assignee of all right, title, and interest in and to the 549 patent.

COUNT I

DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,330,549 UNDER 35 U.S.C. § 271(a)

9. Venadium incorporates by reference each of its allegations in paragraphs 1 to 8.

10. Without license or authorization, Defendant has directly infringed, literally or under the doctrine of equivalents, at least claim 1 of the 549 patent under 35 U.S.C. § 271(a) by, among other things, making, using, offering for sale, selling, or importing products within this District and elsewhere in the United States that perform a method for protecting a computer program from unauthorized use independently of any methodology for distributing the computer program to prospective users, the computer program including an embedded protective code, the method comprising the steps of: (a) inhibiting via the embedded protective code at least one functional feature of the computer program from running on a user computer until the user computer receives an authorization message that is digitally signed by an authorized party using a secret signing key, the secret signing key being associated with a public checking key; (b) providing the embedded protective code with access to the public checking key; (c) running an integrity self-check over the computer program to confirm that the computer program is in an anticipated state, the integrity self-check being embedded in the computer program; (d) communicating the authorization message to the user computer; (e) applying the public checking key to the authorization message for authenticating it; and (f) enabling said functional feature to run on the user computer if the authorization message is authenticated and if the integrity self-check result confirms that the computer program is in the anticipated state.

11. Without license or authorization, Defendant has directly infringed, literally or under the doctrine of equivalents, at least claim 14 of the 549 patent under 35 U.S.C. § 271(a) by, among other things, making, using, offering for sale, selling, or importing products within this District and elsewhere in the United States that perform the method described in paragraph 10 wherein the embedded protective code controls functionality of the computer program in accordance with predetermined rules.

12. The Bluetooth Patent/Copyright License Agreement excludes claims that are not “Necessary Claims.” At least claim 14 is not a “Necessary Claim” under paragraph 1(o) of the Bluetooth Patent/Copyright License Agreement (the “License”) of the Bluetooth Special Interest Group because under subparagraph 1(o)(ii) of the License, at least claim 14 is based on an implementation of a portion of the Bluetooth Specification that is “not within the bounds of the Scope” of the License as defined in paragraph 1(p). Attached at Exhibit B is a true and correct copy of the Bluetooth Patent/Copyright License Agreement.

13. At least claims 1 and 14 are not Necessary Claims and do not fall within the Scope of the License because under subparagraph 1(o)(iii), “if licensed, would require a payment of royalties by the Licensor [*i.e.*, Defendant] to unaffiliated third parties [*i.e.*, Venadium LLC].”

14. Under paragraph 1(p) of the License, at least claim 14 is not within the Scope of the License because it is directed to “(i) [] enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Bluetooth Specification and/or Foundation Specification, but are not themselves expressly set forth in the Bluetooth Specification and/or Foundation Specification (*e.g.*, semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, etc.); or . . . (iii) [] portions of any product and any combinations thereof the purpose or function of which is not required for compliance with the Bluetooth Specification and/or Foundation Specification; or (iv) Application Programming Interfaces, applications, or user interfaces; including the technology used to generate, display or interact with a user.”

15. The accused methods are an integral part of at least Defendant's laptop computer models: Aspire S7-392-7863, Aspire SW5-271-640N, Aspire SW5-271-64V2, Aspire SW5-271-62X3, SW5-111-14C9, SW5-111-16GW, SW5-111-18DY, Aspire E5-571-32H0, Aspire E5-571-71ME, Aspire E5-521G-60BX, Aspire E5-571G-31WP, Aspire V3-572PG-546C, Aspire V3-572PG-767J, Aspire V3-572G-7609, Aspire V3-472-57M0, Aspire ES1-512-C96S, Aspire ES1-111M-C7DE, Aspire V5-552P-X882, Aspire V5-573PG-7494, Aspire V5-561-9628, Aspire V3-772G-5413, Aspire V3-772G-7616, C720P-2625, C720-2103, C720-2844, C720-3605, C720P-2457, SW5-012-11SK, SW5-012-14HK, SW5-012-192E, SW5-012-1815, SW5-012-15XE, SW3-013-1396, SW3-013-11N8, SW3-013-14WG, SW3-013-15U9, SW3-013-17Z6, SW3-013-15LE, SW3-013-1369, SW3-013-127T, SW3-013-105N, SW3-013-14M2, and Aspire M5-481PT-6819.

16. The accused methods are an integral part of at least Defendant's tablet computer series: Iconia Tab 10, Iconia Tab 8, Iconia W4, Iconia Tab 8 W, Iconia A1, Iconia One 7, and Iconia One 8.

17. The accused methods are an integral part of at least Defendant's smartphones: Liquid M220, Acer Liquid Jade, Liquid Jade S, Liquid Z500, Acer Liquid E700, Acer Liquid X1.

18. Defendant's laptop computer models, tablet computer series, and smartphones are collectively referred to as the "Accused Products." The Accused Products are a non-exhaustive list of products that infringe at least claims 1 and 14 of the 549 patent.

19. Defendant has known of the 549 patent since at least the filing of the original complaint in this case.

20. Defendant has taken no steps since learning of the 549 patent to cease all sales of its Accused Products or to modify or redesign its Accused Products so that they do not infringe the 549 patent.

21. Defendant's direct infringement is willful.

22. Based on Defendant's knowledge of the '189 patent and its failure to cease all sales of its Accused Products or to modify or redesign its Accused Products so that they do not infringe the 549 patent, Defendant has acted despite an objectively high likelihood that its actions constituted infringement of a valid patent, and it knew or should have known of that objectively high risk.

23. Plaintiff has been damaged as a result of Defendant's willful direct infringement.

24. Plaintiff is entitled to treble damages under 35 U.S.C. § 284 due to Defendant's willful direct infringement.

COUNT II

DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,330,549 UNDER 35 U.S.C. § 271(b)

25. Venadium incorporates by reference each of its allegations in paragraphs 1 to 24.

26. Defendant has induced infringement of at least claims 1 and 14 of the 549 patent under 35 U.S.C. § 271(b).

27. Defendant has had actual notice of the 549 patent since at least the filing date of the original complaint in this case.

28. Defendant's customers directly infringe, literally or under the doctrine of equivalents, at least claims 1 and 14 with the aid of Defendant's instructions that are supplied with the Accused Products.

29. Defendant has made the affirmative, intentional decision not to redesign or modify its Accused Products since at least the filing date of the original complaint in this case to avoid directly infringing or inducing infringement of the 549 patent.

30. Defendant specifically intends for its customers to directly infringe the 549 patent based on its affirmative, intentional decision not to redesign or modify its Accused Products and avoid directly infringing or inducing infringement of the 549 patent.

31. Defendant has known of the 549 patent since at least the filing of the original complaint in this case.

32. Defendant has taken no steps since learning of the 549 patent to cease all sales of its Accused Products or to modify or redesign its Accused Products so that they do not infringe the 549 patent.

33. Defendant's induced infringement is willful.

34. Based on Defendant's knowledge of the '189 patent and its failure to cease all sales of its Accused Products or to modify or redesign its Accused Products so that they do not infringe the 549 patent, it has acted despite an objectively high likelihood that its actions constituted infringement of a valid patent, and it knew or should have known of that objectively high risk.

35. Plaintiff has been damaged as a result of Defendant's willful induced infringement.

36. Plaintiff is entitled to treble damages under 35 U.S.C. § 284 due to Defendant's willful induced infringement.

PRAYER FOR RELIEF

Venadium seeks the following relief from this Court:

A. Judgment that Defendant has directly infringed the 549 patent, literally or under the doctrine of equivalents, under 35 U.S.C. § 271(a);

B. Judgment that Defendant has induced infringement the 549 patent under 35 U.S.C. § 271(b);

C. Judgment that Defendant's direct infringement is willful and that it has willfully induced infringement the 549 patent;

D. An accounting of sales of all infringing products through the time of judgment;

E. An award of damages in the form of at least a reasonable royalty for Defendant's past and future infringement of the 549 patent through the time of judgment, together with pre- and post-judgment interest and costs under 35 U.S.C. § 284;

F. An award of treble damages under 35 U.S.C. § 284 due to Defendant's willful infringement.

G. Judgement that this case is exceptional and an award of Venadium's reasonable attorneys' fees and costs under 35 U.S.C. § 285; and

H. An award to Venadium of such further relief at law or in equity that this Court deems just and proper.

JURY TRIAL DEMAND

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

Dated: November 18, 2015

Respectfully submitted,



Peter J. Corcoran, III – Lead Attorney
Texas State Bar No. 24080038
CORCORAN IP LAW, PLLC
2019 Richmond Road, Suite 380
Texarkana, Texas 75503
Tel: (903) 701-2481
Fax: (844) 362-3291
Email: peter@corcoranip.com

*Counsel for Plaintiff
Venadium 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 18, 2015.



Peter J. Corcoran, III