

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

DIGITAL REG OF TEXAS, LLC,

Plaintiff,

v.

SOLARWINDS, INC.

Defendant.

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CIVIL ACTION NO. 6:15-CV-00743-RWS

JURY TRIAL DEMANDED

PLAINTIFF’S FIRST AMENDED COMPLAINT

Plaintiff Digital Reg of Texas, LLC (“Plaintiff” or “Digital Reg”), by and through its attorneys, for its First Amended Complaint against SolarWinds, Inc. (“Defendant” or “SolarWinds”), and demanding trial by jury, hereby alleges as follows:

I. NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 271, *et seq.*, to enjoin and obtain damages resulting from Defendant’s unauthorized use, sale, and offer to sell in the United States of products, methods, processes, services and/or systems that infringe one or more claims of United States Patent No. 6,389,541, issued on May 14, 2002, for “Regulating Access to Digital Content” naming Patrick E. Patterson as inventor (the “541 Patent”), a true and correct copy of which is attached hereto as **Exhibit 1**.

II. PARTIES

2. Digital Reg is a limited liability corporation organized and existing under the laws of the State of Texas.

3. On information and belief, SolarWinds, Inc. is a Delaware corporation with its principal place of business located at 1301 South MoPac Expressway, Suite 360, Austin, Texas 78746. Upon information and belief, Defendant SolarWinds, Inc. is authorized to do business in Texas. SolarWinds, Inc. may be served by serving its registered agent, C T Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

III. JURISDICTION AND VENUE

4. This is an action for patent infringement which arises under the Patent Laws of the United States, in particular, 35 U.S.C. §§271, 281, 283, 284 and 285.

5. This Court has exclusive jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1338(a).

6. On information and belief, venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because Defendant has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

7. On information and belief, Defendant SolarWinds 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 Judicial District.

IV. FACTUAL ALLEGATIONS

8. Digital Reg is a subsidiary of DRM Technologies, L.L.C. ("DRM"). Digital Reg and DRM have been leading pioneers and innovators in the areas of securing digital content, secure delivery of digital content, and tracking and authorizing use of digital content.

9. As early as 1997, the founders of Digital Reg envisioned a world where digital content would move freely about the internet while still protecting the rights of its creators. Digital Reg's affiliates and predecessors were recognized pioneers in this area, and have been awarded industry accolades and many patents, including the Patents-in-Suit.

10. Digital Reg's affiliates and predecessors were among the first to package and sell digital music, books, newspapers and documents on the Internet in 1998-1999, and were voted Best New Company at Internet World that year.

11. In 1998, the Internet was still emerging as a serious commercial force. *See* '541 Patent, 1:26-33. Less than half of U.S. adults were on the Internet according to the Pew research center, and most of those for the weather. *See* <http://www.people-press.org/1999/01/14/the-internet-news-audience-goes-ordinary/>.

12. As the world became more connected, it became increasingly important to protect digital content in a way that coordinated well with the open systems that were becoming increasingly prevalent. *See* '541 Patent, 3:21-36.

13. The '541 Patent represents an inventive advancement over that which was conventional at the time of filing on May 15, 1998. Claim 32 of the '541 Patent is as follows:

32. A computer-implemented method of regulating access to protected digital content at a client, the method comprising:

including the protected digital content in a package that comprises an executable process, providing the package to the client,

in connection with a request at the client for access to the protected digital content, executing the executable process at the client to request permission from a server for access to the protected digital content,

receiving from the server a token;

based on the token received, selectively granting access at the client to the digital content.

14. The foregoing steps were not routine or conventional at the time of filing. The provision of an executable process of the client that requests permission from a server for access to the protected content differs from that which was customary at the time, which was the protection of physical copies of content and the prevention of duplication of electronic copies.

15. The claimed invention does not confer a monopoly over the abstract idea of preventing unauthorized use of content. It claims a very specific implementation of a DRM technique that is applied in the context of a client-server network architecture. It includes the algorithm described in claims 32 for specific communication exchanges between client and server machines.

16. As a consequence of the claimed invention, the technical problem associated with the free distribution of digital data was addressed. Specifically, as set forth in the specification, while the content may be freely transferable from client machine to client machine through email and other digital distribution techniques, the token and may be transparent to the recipient resource and thus not freely shareable between machines. '541 Patent, 3:56-63. Another authorization process is required if access is attempted at a different computer. *Id.*, 3:60-63.

17. Defendant SolarWinds provides software and services directed to secure distribution of digital content and digital rights management, including, without limitation, SolarWinds Orion Network Performance Monitor. To protect its software, SolarWinds requires that such software be activated by its customers in a manner that it directs and controls.

18. Defendant SolarWinds implements contractual protections in the form of license agreements with its customers to preclude the unauthorized reproduction, distribution and modification of its software. Moreover, Defendant SolarWinds implements technical

precautions to attempt to thwart customers who would circumvent SolarWinds' control over the use and distribution of its software.

V. COUNT ONE

DIRECT AND INDIRECT INFRINGEMENT OF U.S. PATENT NO. 6,389,541

19. Digital Reg incorporates by reference its allegations in Paragraphs 1-18 as if fully restated in this paragraph.

20. Digital Reg is the assignee and owner of all right, title and interest to the '541 Patent. Digital Reg has the legal right to enforce the patent, sue for infringement, and seek equitable relief and damages.

21. On information and belief, Defendant SolarWinds, without permission of Digital Reg, has been and is presently infringing the '541 Patent, as infringement is defined by 35 U.S.C. § 271(a), including through making, using, selling and offering for sale methods and articles infringing one or more claims of the '541 Patent. Defendant SolarWinds is thus liable for direct infringement of the '541 Patent pursuant to 35 U.S.C. § 271(a).

22. On information and belief, at least since the filing of this Complaint, Defendant SolarWinds, without permission of Digital Reg, has been and is presently indirectly infringing the '541 Patent, including actively inducing infringement of the '541 Patent under 35 U.S.C. § 271(b) and contributing to infringement of the '541 Patent under 35 U.S.C. § 271(c). Such inducements include without limitation, with specific intent to encourage the infringement, knowingly inducing consumers to use infringing articles and methods that SolarWinds knew or should have known infringe one or more claims of the '541 Patent.

23. As a result of SolarWinds' infringement of the '541 Patent, Digital Reg has suffered monetary damages, and is entitled to an award of damages adequate to compensate it for such infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

VI. JURY DEMAND

24. Plaintiff Digital Reg demands a trial by jury of all matters to which it is entitled to trial by jury, pursuant to FED. R. CIV. P. 38.

VII. PRAYER FOR RELIEF

WHEREFORE, Digital Reg prays for judgment and seeks relief against Defendant as follows:

- A. That the Court determine that the '541 Patent is infringed by Defendant SolarWinds;
- B. That the Court award damages adequate to compensate Digital Reg for the patent infringement that has occurred, together with prejudgment and post-judgment interest and costs, and an ongoing royalty for continued infringement;
- C. In the alternative, that the Court permanently enjoin Defendant pursuant to 35 U.S.C. §283; and
- D. That the Court award such other relief to Digital Reg as the Court deems just and proper.

DATED: December 3, 2015

Respectfully submitted,

/s/Andrew G. DiNovo

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CERTIFICATE OF SERVICE

I certify that on December 3, 2015, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/Andrew G. DiNovo

Andrew G. DiNovo