

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

ZIX, CORP.,

Plaintiff,

v.

ECHOWORX, CORP.,

Defendant.

Civil Action No. 2:15-cv-1272

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Pursuant to the Court's Docket Control Order (Dkt. No. 49), Zix Corporation ("ZixCorp," "Plaintiff") files this First Amended Complaint and demand for jury trial seeking relief for patent infringement by Echoworx Corporation ("Echoworx," "Defendant"). ZixCorp alleges the following:

NATURE OF THE ACTION

1. ZixCorp is a leading provider of secure email solutions, being trusted by influential institutions in the healthcare, finance, and government sectors. ZixCorp's customers include federal financial regulators, divisions of the U.S. Treasury, the Securities and Exchange Commission (SEC), one in four U.S. banks, and one in five U.S. hospitals.

2. ZixCorp has a long history of innovation in the field of secure email technologies and holds fundamental patents arising from its research and development in this field. One of those patents are at issue in this lawsuit.

3. This is an action for patent infringement that arises under the Patent Laws of the United States, namely, 35 U.S.C. §§ 1 *et seq.*

THE PARTIES

4. Plaintiff ZixCorp is a Texas corporation, with its principal place of business located at 2711 North Haskell Avenue, Suite 2200, Dallas, Texas 75204-2960.

5. ZixCorp is the owner of U.S. Patent No. 6,760,752 (“the ’752 Patent”). The ’752 Patent, entitled “Secure Transmission System,” is generally directed to a method and apparatus for transferring a message securely from a sender to a recipient over a network. The ’752 Patent was duly and legally issued by the U.S. Patent and Trademark Office on July 6, 2004, after a full and fair examination. The ’752 Patent is valid and enforceable. A true and correct copy of the ’752 Patent is attached as Exhibit A.

6. On information and belief, Defendant Echoworx is a Canadian corporation, with its principal place of business at 4101 Yonge Street, Suite 708, Toronto, Ontario, Canada M2P 1N6. Defendant regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, itself and/or through one or more of its subsidiaries, affiliates, business divisions, or business units.

7. Upon information and belief, Defendant offers its products and/or services through what Echoworx refers to on its website as its “partners and resellers” and what Echoworx refers to in its internal documentation (*e.g.*, EWX-0000703-749 at EWX-0000708) as “partners” or “managed service providers” including AnubisNetworks, Apptix, AT&T, BT, Cloudstar, Dialogix, Global Relay, Hostway, Intermedia, JetStream, ProfitStars, McAfee, MessageOne, Symantec, Symantec.cloud, and Verizon Communications, among other entities.

8. Upon information and belief, ProfitStars is a division of Jack Henry & Associates and maintains its headquarters and principal place of business at 1021 Central Expressway South, Allen, Texas 75013, in the Eastern District of Texas.

9. Upon information and belief, McAfee is part of Intel Security and maintains its headquarters and principal place of business at 5000 Headquarters Drive, Plano, Texas 75024, in the Eastern District of Texas.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to U.S.C. §§ 1331 (jurisdiction over federal questions) and 1338(a) (jurisdiction over civil actions arising under any Act of Congress relating to patents).

11. Venue is proper in this district under 28 U.S.C. § 1391(b), (c), (d) and/or 28 U.S.C. § 1400(b). On information and belief, Defendant conducts business in this district, the claims alleged in this Complaint arise in this district, and the acts of infringement have taken place and are continuing to take place in this district.

12. On information and belief, Defendant is subject to this Court's general and specific personal jurisdiction because Defendant has sufficient minimum contacts within the State of Texas and the Eastern District of Texas (including via its website, via its "partner or reseller" relationship with ProfitStars and McAfee and via sales of Defendant's products and services), pursuant to due process and/or the Texas Long Arm Statute, because Defendant purposefully availed itself of the privileges of conducting business in the State of Texas and in the Eastern District of Texas, because Defendant regularly conducts and solicits business within the State of Texas and within the Eastern District of Texas, and because ZixCorp's causes of

action arise directly from Defendant's business contacts and other activities in the State of Texas and in the Eastern District of Texas.

COUNT I: INFRINGEMENT OF

U.S. PATENT NO. 6,760,752

13. ZixCorp repeats and realleges the allegations set forth in paragraphs 1 through 12.

14. Upon information and belief, Defendant has been and now is infringing the '752 Patent, either directly or under the doctrine of equivalents, in the State of Texas, in this judicial district, and elsewhere in the United States by making, using, importing, selling and/or offering for sale one or more software products and services, including Encrypted Mail, OneWorld Encrypted Webmail, OneWorld Enterprise Encryption, OneWorld Encrypted Documents, mobilEncrypt (including Android, BlackBerry, iOS platforms), and any other past, present, or planned Echoworx product that may be used in the manner accused in the charts attached as Exhibits B-F (collectively, "the Accused Products").

15. Upon information and belief, the use of each of OneWorld Encrypted Webmail, OneWorld Enterprise Encryption, OneWorld Encrypted Documents, and any other past, present, or planned Echoworx product that may be used in the manner accused in the charts attached as Exhibits C-E (collectively, "the Accused Gateway Products") individually either embodies or practices each and every limitation of Claims 1, 2, 9, 10, 13, 15, 26, 32, 33, 36, 51, and 57 and, when used in combination with Echoworx's Certificate Authority Server ("Echoworx's CA Server"), practices each and every limitation of Claims 71, 76, and 78. When installed and used by an end user under the direction and control of Echoworx, each of Encrypted Mail, mobilEncrypt, and any other past, present, or planned Echoworx product that may be used in the manner accused in the charts attached as Exhibits B and F (collectively, "the Accused Endpoint

Products”) individually either embodies or practices each and every limitation of Claims 1, 2, 9, 10, 13, 15, 26, 32, 33, 36, 51, and 57 and, when used in combination with Echoworx’s CA Server, practices each and every limitation of Claims 71, 76, and 78. Echoworx directs and controls end users by, for example, requiring them to install the Accused Endpoint Products on client devices (*e.g.*, desktop computers, laptop computers, smartphones, etc.) and to compose or create messages in order to receive the services provided by those products.

16. Upon information and belief, each of the Accused Products infringes at least one of Claims 1, 2, 9, 10, 13, 15, 26, 32, 33, 36, 51, 57, 71, 76, and 78 (collectively, “the Asserted Claims”) of the ’752 Patent by signing and encrypting messages using public and private keys, by sending and receiving signed encrypted messages, by retrieving the public key of a recipient each time a message to the recipient is encrypted, by checking the status of a sender’s public key, and by constructing time stamp certificates that comprise three or more of the following elements: a representation of the message to be sent, a representation of the sender’s identity, a representation of the sender’s public key, a representation of the recipient’s identity, a representation of a recipient’s public key, and a current time or time stamp, as set forth in Exhibits B-F.

17. At least by the filing of the complaint and, on information and belief, as a result of prior proceedings between ZixCorp and Echoworx, Echoworx has known and now knows that at least the Accused Products and services provided in connection with the Accused Products infringe the ’752 Patent, are used by customers to infringe the ’752 Patent, and are especially made or especially adapted for use in an infringement of the ’752 Patent.

18. Accordingly, upon information and belief, Defendant also has been and now is contributing to the infringement of each of the Asserted Claims of the ’752 Patent in the State of

Texas, in this judicial district, and elsewhere in the United States by offering to sell and selling the Accused Endpoint Products within the United States. The Accused Endpoint Products are especially made or adapted for use in an infringement of the '752 Patent and are not staple articles or commodities of commerce suitable for substantial noninfringing uses. When installed and used on a client device (*e.g.*, desktop computer, laptop computer, smartphone, etc.), the Accused Endpoint Products are configured for use in practicing the patented processes of Claims 1, 2, 9, 10, 13, 15, 26, 32, 33, 36, 51, and 57. Upon information and belief, Defendant also has been and now is inducing infringement of each of the Asserted Claims of the '752 Patent in the State of Texas, in this judicial district, and elsewhere in the United States by instructing end users how to install and use the Accused Endpoint Products and how to use the Accused Gateway Products. In accordance with Echoworx's instructions, those end users install the Accused Endpoint Products on client devices (*e.g.*, desktop computers, laptop computers, smartphones, etc.) and use the Accused Products to practice each and every limitation of Claims 1, 2, 9, 10, 13, 15, 26, 32, 33, 36, 51, and 57.

19. Defendant's acts violate 35 U.S.C. § 271, and Defendant is thus liable for infringement of the '752 Patent.

20. Upon information and belief, Defendant's infringement of the '752 Patent has been and/or is willful.

21. As a result of Defendant's infringement of the '752 Patent, ZixCorp has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court.

22. Unless a permanent injunction is issued enjoining Defendant and its agents, servants, employees, representatives, affiliates, partners and all others acting in concert with Defendants from infringing the '752 Patent, ZixCorp will be greatly and irreparably harmed.

DEMAND FOR JURY TRIAL

23. ZixCorp demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

24. ZixCorp respectfully requests a judgment against Defendant as follows:

25. A judgment in favor of ZixCorp that Defendant has infringed the '752 Patent, and that such infringement has been and is willful;

26. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, partners, and all others acting in concert with Defendant from infringing the '752 Patent;

27. A judgment and order requiring Defendant to pay ZixCorp its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '752 Patent as provided under 35 U.S.C. § 284;

28. An award to ZixCorp for enhanced damages resulting from the knowing, deliberate, and willful nature of Defendant's prohibited conduct with notice being made at least as early as the date of the filing of this Complaint, as provided under 35 U.S.C. § 284; and

29. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to ZixCorp its reasonable attorneys' fees.

Dated: April 12, 2016

Respectfully submitted,

By: /s/ Luke K. Pedersen by permission ELD

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the above and foregoing document was served on counsel for Defendant and Third Party Defendant via CM/ECF on April 12, 2016.

/s/Elizabeth L. DeRieux
Elizabeth L. DeRieux