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

BANERTEK LLC, Plaintiff, v. BADOO TRADING LIMITED, Defendant.	Case No. COMPLAINT FOR PATENT INFRINGEMENT DEMAND FOR JURY TRIAL

Plaintiff Banertek LLC ("Banertek") demands a jury trial and complains against Defendant Badoo Trading Limited ("Badoo"), and states as follows:

THE PARTIES

1. Banertek is a corporation organized and existing under the laws of the State of Texas, conducting business in this judicial district.

2. On information and belief, Badoo is a United Kingdom company with its headquarters located at Media Village, 131-151 Great Titchfield Street, London, W1W 5BB, United Kingdom, and conducts business in this judicial district.

JURISDICTION AND VENUE

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

4. Banertek is informed and believes, and based thereon alleges, that Badoo is doing business and committing acts of infringement of the patent identified below in this judicial district, and is subject to personal jurisdiction in this judicial district.

5. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

THE PATENT

6. On January 4, 2005, U.S. Patent No. 6,839,731 B2 ("the '731 Patent") was duly and legally issued to Vigilos, Inc., naming Bruce Alexander, David Antal, Matthew Litke, Christopher Schebel, and Paul Thompson as the inventors. The '731 Patent claims an invention entitled "System and Method For Providing Data Communication In a Device Network". On March 28, 2014, Vigilos, Inc. assigned all right, title and interest in and to the '731 Patent to Olivistar LLC and on June 10, 2016, Olivistar LLC assigned all right, title and interest in and to the '731 Patent to Banertek LLC. A copy of the '731 Patent is attached to this Complaint as Exhibit 1.

7. The '731 Patent is directed to a novel system and method for data communication in a device network. The network is comprised of a central communication device, a number of premises-server computing devices, and a number of client computing devices, wherein the client computing device communicates with the central communication device to request access to device data from the premises-server computing devices. Once access rights are established, the client computing device communicates directly with specific premises-server computing devices having the requested data. A command application resident on each resident-premises computing device administers the flow of data between the computing devices. For example, the central communication device can be the primary server of a company such as Badoo that provides a downloadable mobile app, and the premises-server computing devices and client computing devices can be mobile devices onto which the app has been downloaded and which transforms the hardware mobile devices into the claimed premises-server computing devices and client computing devices, respectively, that enable mutually interested third parties to communicate with one another based on common identification attributes specified by such third parties. Without the app, the mobile devices

could not transformed into and constitute the respective computing devices that are part of the network claimed in the '731 Patent.

8. Claim 1 of the '731 Patent is directed to a system that includes at least one or more premises-server computing devices, a central communication device, and at least one client computing device in communication with the central communication device. The system employs a method for processing device data communicated between the different devices comprising: transmitting an access request to the central communication device from the client computing device, the access request including one or more identification attributes corresponding to the client computing device; obtaining from the central communication device a listing of available premises-server computing devices that the client computing device is authorized to communicate with based at least in part on the identification attributes; transmitting a communication request to communicate with at least one of the premises-server computing devices; establishing a direct connection with a proxy application in each of the one or more premises-server computing device for which the communication request is successful; and obtaining device information from each proxy application associated with the one or more premises-server computing devices, the device information corresponding to a current input and/or output state.

9. Claim 2 of the '731 Patent is directed to the same method as Claim 1 with the added requirement that transmitting an access request includes transmitting information to authenticate an individual user.

10. Claim 3 of the '731 Patent is directed to the same method as Claim 1 with the added requirement that transmitting an access request includes accessing a network based website corresponding to the central communication device, providing one or more identification attributes, and submitting the access request via the network-based website.

11. Claim 4 of the ‘731 Patent is directed to the same method as Claim 1 with the added requirement that obtaining a listing of available premises-server computing devices includes obtaining a listing of available input and/or output devices connected to each of the available premises-server computing devices.

12. Claim 5 of the ‘731 Patent is directed to the same method as Claim 4 with the added requirement that transmitting a communication request to communicate with one or more premises-server computing devices includes transmitting a selection to receive data from one or more available devices.

13. Claim 6 of the ‘731 Patent is directed to the same method as Claim 5 with the added requirement that transmitting a communication request includes transmitting information used for the delivery of input and/or output device data.

14. Claim 7 of the ‘731 Patent is directed to the same method as Claim 1 with the added requirement that transmitting a communication request to communicate with one or more premises-server computing devices includes initiating a command proxy protocol registering a client computing device with the proxy application of the premises-server computing device.

15. Claim 8 of the ‘731 Patent is directed to the same method as Claim 1 with the added requirement that the direct connection with the proxy application is a persistent connection.

16. Claim 9 of the ‘731 Patent is directed to the same method as Claim 1 with the added requirement of obtaining updated input and/or output device data from the proxy application, wherein the updated device data is obtained without transmitting any subsequent request from the client computing device.

17. Claim 10 of the ‘731 Patent is directed to the same method as Claim 1 with the added requirement of obtaining software updates from the central communication device by transmitting an access request to the central communication device.

18. Claim 11 of the ‘731 Patent is directed to the same method as Claim 1 with the added requirement that establishment of a direct connection with a proxy application is in a private network.

19. Claim 12 of the ‘731 Patent is directed to the same method as Claim 1 with the added requirement that obtaining device information from each proxy application in the one or more premises-server computing devices includes obtaining information filtered in accordance with one or more criteria submitted to the proxy application.

20. Claim 13 of the ‘731 Patent is directed to a computer readable medium containing computer executable instructions that can perform the method recited in Claim 1.

21. Claim 14 of the ‘731 Patent is directed to a computer having a processor, a memory, and an operating system which can perform the method recited in Claim 1.

22. Claim 15 of the ‘731 Patent is directed to a system that includes one or more premises-server computing devices in communication with a number of input and/or output devices, a central communication device and at least one client computing device in communication with the central communication device, and a method for processing device data, the method comprising: obtaining an access request from a client computing device, the access request including one or more identification attributes corresponding to the client device; generating a list of premises-server computing devices available for communication with the client device, the list of premises-server computing corresponding to a set of premises-server computing devices the client device obtains access to based upon a processing of the one or more identification attributes; and transmitting the

list of premises-server computing devices available for communication with the client device, wherein the client device cannot directly access the premises-server computing devices prior to obtaining the list of premises-server computing devices available for communication.

23. Claim 16 of the ‘731 Patent is directed to the same method as Claim 15 with the added requirement that obtaining an access request includes providing a user identification and password.

24. Claim 17 of the ‘731 Patent is directed to the same method as Claim 15 with the added requirement of generating a network-based website in response to an initial access request from a client device, and obtaining a user input of the one or more identification attributes corresponding to the client device.

25. Claim 18 of the ‘731 Patent is directed to the same method as Claim 15 with the added requirement that transmitting the list of premises-server computing devices available for communication with the client device includes transmitting an identification of one or more devices associated with each of the premises-server computing devices available for communication.

26. Claim 19 of the ‘731 Patent is directed to the same method as Claim 15 with the added requirement that transmitting the list of premises-server computing devices available for communication with the client device includes an IP address corresponding to each premises-server computing device to help facilitate direct communication between the client device and a premises-server computing device.

27. Claim 20 of the ‘731 Patent is directed to the same method as Claim 15 with the added requirement of transmitting software updates with the transmission of the list of available premises-server computing devices.

28. Claim 21 of the ‘731 Patent is directed to a computer readable medium having computer-executable instructions for performing the method recited in Claim 15.

29. Claim 22 of the ‘731 Patent is directed to any computer having a processor, a memory, and an operating system which can perform the method as discussed in Claim 15.

30. Claim 23 of the ‘731 Patent is cancelled.

31. Claim 24 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim.

32. Claim 25 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim.

33. Claim 26 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim.

34. Claim 27 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim.

35. Claim 28 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim.

36. Claim 29 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim.

37. Claim 30 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim

38. Claim 31 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim

39. Claim 32 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim

40. Claim 33 of the ‘731 Patent is cancelled as it depends on claim 23 which is a cancelled claim.

41. Claim 34 of the ‘731 Patent is directed to a system for processing data from input and/or output devices, comprising: at least one client computing device for transmitting access requests via a communication network, the access requests including one or more identification attributes corresponding to the client computing device; a central communication device in communication with the client computing device via a communication network, wherein the central communication device receives the access request and transmits a list of available premises-server computing devices corresponding to a set of premises the client computing device is authorized to access; one or more premises-server computing devices in communication with a number of input and/or output devices, the one or more premises-server computing devices including a proxy application to communicate with the client computing device via a direct communication connection and to transmit device data to the client computing device via the direct communication connection; wherein the client computing device cannot establish the direct communication connection with the premises-server computing device prior to obtaining the list of available premises-server computing devices from the central communication device.

42. Claim 35 of the ‘731 Patent is directed to the same system as Claim 34 with the added requirement that client communication device transmits the access request via a network-based website provided by the central communication device.

43. Claim 36 of the ‘731 Patent is directed to the same system as Claim 34 with the added requirement that the central communication device transmits software application updates to the client computing device in response to an access request.

44. Claim 37 of the ‘731 Patent is directed to the same system as Claim 34 with the added requirement that the proxy application in the premises-server computing devices registers the client computing device to receive the data from the input/and or output device.

45. Claim 38 of the ‘731 Patent is directed to the same system as Claim 37 with the added requirement that the registration includes an identification of device data to be received by the client computing device.

46. Claim 39 of the ‘731 Patent is directed to the same system as claim 37 with the added requirement that the registration includes instructions for filtering the device data prior to transmitting the device data to the client computing device.

47. Claim 40 of the ‘731 Patent is directed to the same system as claim 37 with the added requirement that the registration includes instructions for processing the device data prior to transmitting the device data to the client computing device.

48. Claim 41 of the ‘731 Patent is directed to the same system as claim 37 with the added requirement that the direct connection between the proxy application and the client computing device is a persistent connection.

49. Claim 42 of the ‘731 Patent is directed to the same system as claim 37 with the added requirement that the proxy application transmits updated device data to the client computing device without requiring a request for updated device data from the client computing device.

50. Claim 43 of the ‘731 Patent is directed to the same system as Claim 37 with the added requirement that a device server is in communication with the premises-based server computing device, wherein the device server communicates directly with the input and output devices.

BADOO'S INFRINGING SYSTEM AND METHOD

51. Without authority from Banertek, Badoo makes, uses (including by having its employees test), markets and sells or otherwise provides a system and method for providing data communication in a device network. Specifically, Badoo provides a downloadable app for facilitating mobile communications between mutually interested users, i.e., the "Badoo App". Downloading the Badoo App onto a mobile device transforms and enables such hardware devices to operate as the claimed client computing devices and premises-server computing devices, respectively. Without the app, the mobile devices cannot communicate with the central communication device or with each other, and do not constitute or operate as part of the data communications network claimed in the '731 Patent.

52. Badoo "is a dating-focused social networking service." *See* https://en.wikipedia.org/wiki/Badoo.

53. Badoo was " founded in 2006." *Id.*

54. Badoo is "the world's largest and fastest growing social network for meeting new people with over 200 million members." *See* https://corpus1.badoo.com/en/.

55. Badoo's website at https://us1.badoo.com/en/help/ and https://corpus1.badoo.com/faq/ provides support and instructions explaining how to use its App. These instructions teach and suggest to use the Badoo App in a way that infringes Claims 1-22 and 34-43 of the '731 Patent.

COUNT I
DIRECT INFRINGEMENT

56. Banertek repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 55 above.

57. As a result of making, using (including having its employees internally test and use the Badoo App on a mobile device, as alleged below), marketing, and providing its Badoo App, Badoo has directly infringed Claims 1-22 and 34-43 of the '731 Patent literally and/or under the doctrine of equivalents. As set forth *supra*, the Badoo App is specifically designed to perform each and every step set forth in Claims 1-22 and 34-43 of the '731 Patent and each use of the Badoo App will result in infringement of at least one claim of the '731 Patent.

58. Upon information and belief, Badoo directly infringed Claims 1-22 and 34-43 of the '731 Patent when it internally tested the Badoo App, which is programmed to operate on a client computing device, e.g., a mobile device. Upon information and belief, Badoo employees and/or individuals under Badoo's control downloaded the Badoo App onto a Badoo employee's mobile device, to test the operation of the Badoo App and its various functions, in the manner set forth in the '731 Patent and described in detail in paragraphs 7 through 55 above. Banertek therefore alleges that Badoo directly infringed the '731 Patent by using the Badoo App to perform the systems and methods claimed by the '731 Patent.

59. Upon information and belief, Badoo also directly infringed Claims 1-22 and 34-43 of the '731 Patent when its employees use the Badoo App, which is programmed to operate on a client computing device, e.g., a mobile device. Upon information and belief, Badoo employees and/or individuals under Badoo's control downloaded the Badoo App onto a Badoo employee's mobile device to use the functionality of the Badoo App, in the manner set forth in the '731 Patent and described in detail in paragraphs 7 through 55 above. Banertek therefore alleges that Badoo directly

infringed the '731 Patent by using the Badoo App to perform the systems and methods claimed by the '731 Patent.

60. Since at least the date that this Complaint was filed, Badoo has willfully infringed Claims 1-22 and 34-43 of the '731 Patent by directly infringing the patent with knowledge of the patent and in spite of an objectively high likelihood that its actions constituted infringement of the '731 Patent.

61. Banertek has suffered damages as a result of Badoo's direct infringement of the '731 Patent.

COUNT II
INDIRECT INFRINGEMENT

62. Banertek repeats and incorporates herein the entirety of the allegations contained in paragraphs 1 through 61 above.

63. The Badoo App is particularly adapted for use in a manner that infringes Claims 1-22 and 34-43 of the '731 Patent. Specifically, as alleged *supra*, The Badoo App is designed to facilitate mobile communications between mutually interested users.

64. Badoo has been aware of the '731 Patent since at least the filing date of this Complaint, and upon information and belief was aware, or should have been aware, since at least such date that the use of its Badoo App constitutes direct infringement of the '731 Patent.

65. In spite of its knowledge of the '731 Patent, Badoo has continued to offer its Badoo App to its users and has continued to instruct them on how to use the App in a manner that infringes Claims 1-22 and 34-43 of the '731 Patent, intending that its customers use the App.

66. Upon information and belief, at least one of Badoo's customers has used the Badoo App in a manner that infringes the '731 Patent since Badoo became aware of the '731 Patent.

67. Badoo indirectly infringes Claims 1-22 and 34-43 of the ‘731 Patent by inducing others to use its Badoo App in a manner that directly infringes the asserted claims. Badoo provides its Badoo App to the public and encourages and instructs them on how to use it, including by encouraging and instructing the use of each of the features claimed by the ‘731 Patent. Due to Badoo’s encouragement and instruction, Badoo customers that use the Badoo App directly infringe the ‘731 Patent by performing each element set forth in the ‘731 Patent and described in detail in paragraphs 7 through 55 above. Badoo has induced these infringing uses with full knowledge of the ‘731 Patent and with full knowledge that the use of its Badoo App as directed constitutes infringement of the ‘731 Patent.

68. Badoo indirectly infringes Claims 1-22 and 34-43 of the ‘731 Patent by contributorily infringing the patent through its provision of the Badoo App. Badoo customers that use the Badoo App directly infringe the ‘731 Patent by performing each element set forth in the ‘731 Patent and described in detail in paragraphs 7 through 55 above. Since at least the filing date of this Complaint, Badoo has known that the use of the App on mobile devices infringes the ‘731 Patent, that the combination of the App as used on mobile devices was patented and infringed the ‘731 Patent, and that such combination of components has no substantial non-infringing use.

69. Banertek has suffered damages as a result of Badoo’s indirect infringement of the ‘731 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Banertek prays for judgment against Defendant Badoo all the counts and for the following relief:

A. Declaration that Banertek is the owner of the right to sue and to recover for infringement of the ‘731 Patent being asserted in this action;

B. Declaration that Badoo has directly infringed, actively induced the infringement of, and/or contributorily infringed the '731 Patent;

C. Declaration that Badoo and its customers are jointly or severally responsible for the damages from infringement of the '731 Patent through the use of the Badoo App;

D. Declaration that Badoo is responsible jointly or severally with its customers for the damages caused by the infringement of the '731 Patent through the use of the Badoo App by Badoo's customers;

E. An accounting for damages under 35 U.S.C. §284 for infringement of the '731 Patent by Badoo, and the award of damages so ascertained to Banertek together with interest as provided by law;

F. Award of Banertek's costs and expenses;

G. Award of Banertek's attorney fees; and

H. Such other and further relief as this Court may deem proper, just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff Banertek demands a trial by jury of all issues properly triable by jury in this action.

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