

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

**SEMANTIC SEARCH TECHNOLOGIES
LLC,**

Plaintiff,

v.

SHEPLERS, INC.,

Defendant.

Case No. 6:16-cv-1067

PATENT CASE

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Plaintiff Semantic Search Technologies LLC files this Amended Complaint against Sheplers, Inc., for infringement of certain claims of United States Patent Nos. 8,793,237 (the “237 Patent”), 8,880,497 (the “497 Patent”), 9,069,860 (the “860 Patent”), and 9,378,521 (the “521 Patent”).

PARTIES AND SUBJECT MATTER JURISDICTION

1. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

2. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff Semantic Search Technologies LLC (“Plaintiff” or “Semantic Search”), is a Texas limited liability company with its principal office located in the Eastern District of Texas, at 5608 W. Plano Parkway, Suite 300, Plano, Texas 75093.

4. The members of Semantic Search are three corporate entities whose stock is held by the three original business partners who have been involved in the Semantic Search business

for many years. Two of these persons are the inventors of the patents in suit, Bruce Matesso and Richard Bridgeman. Therefore, the patents in suit have not been transferred to a third party merely for purposes of litigation; rather, they are being asserted on behalf of the persons who made the inventions and have been involved in these inventions since they were conceived.

5. Upon information and belief, Defendant Sheplers, Inc. (“Defendant”), is a Kansas corporation with a principal office located at 6501 West Kellogg Drive, Wichita, Kansas 67209.

PERSONAL JURISDICTION AND VENUE

6. This Court has personal jurisdiction over Defendant because Defendant has committed, and continues to commit, acts of infringement in the State of Texas, has conducted business in the State of Texas, has directed an interactive website at Texas, and/or has engaged in continuous and systematic activities in the State of Texas.

7. On information and belief, within the State of Texas and the Eastern District of Texas, Defendant has used the patented invention with the website and functionality identified herein below. In addition, on information and belief, Defendant has derived substantial revenues from its infringing acts within the State of Texas and the Eastern District of Texas.

8. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because Defendant is deemed to reside in this District. In addition, and in the alternative, Defendant has committed acts of infringement in this District.

FACTUAL MATTERS

9. The patents in suit – the ‘237 Patent, the ‘497 Patent, the ‘860 Patent, and the ‘521 Patent – are attached to this Complaint as Exhibits A, B, C, and D, respectively.

10. Each of the patents in suit emanates from the same patent family. The original application, U.S. patent application Ser. No. 11/213,145, was filed on August 25, 2005. This

application in turn claims priority from U.S. Provisional Application 60/606,357, which was filed on August 31, 2004. The patents in suit share a common specification. Each of the patents in suit is titled “Computer-Aided Extraction of Semantics From Keywords to Confirm Match of Buyer Offers to Seller Bids.”

11. The inventions described in the claims of the patents in suit are technical, computerized solutions to problems that are particular to computer networks and the Internet.

12. The common specification of the patents in suit describes a problem addressed by the claims of the patent in suit and makes abundantly clear that this problem is one particular to computer networks and the Internet:

There are many descriptions of computer-aided searches of large search spaces, such as the world wide web, whereby narrowing the search space to a successively smaller and more precise area of interest is accomplished using one or more algorithms involving lexicons.

One problem with the use of lexicons is the limitation inherent in a pure textual search. For example, although a lexical search of the world wide web for matches to “blue sweater” might be refined through human-computer interactions to the more specific “blue sweater crew neck men’s large”, the resulting search result set is likely to include citations for:

[Descriptions of false hits ...]

Even more sophisticated computer-aided lexical searches employing lexical associations do not appreciably and consistently reduce the occurrences of search results returning citations that are wildly outside of the target scope (false hits). One commonly employed partial solution to the shortcomings of a pure lexical search is to inject lexical associations into the lexical refinements. Prior attempts to inject lexical associations into computer-aided searches have relied on the existence of a virtual expert advisor, or other access to a domain-specific knowledgebase. In practice such implementations merely inject lexical associations iteratively, resulting in the construction of longer and longer search strings. This technique can result in a rapid narrowing of search space, however this technique does not reliably eliminate or reduce the occurrence of false hits or wildly out of scope citations.

‘237 Patent, col. 1, lines 16-60.

13. The claims of the patents in suit describe various solutions to the previously-existing problems with computer searches, each through a defined sequence of method steps (and, in the '860 Patent, via certain system claims), such that implementation of the specific steps results in achieving a desired result. The common specification confirms this, in general terms:

In use, a mapping between the human-specified values/characteristics and the correct corresponding attribute is required in order to enable an unambiguous and effective (i.e., few or no false hits) computer-aided search of a large structured data search space.

Thus, what is desired is a method and apparatus to confirm the mapping ... '237 Patent, col. 2, lines 15-21. It can readily be seen, from this short excerpt and from a closer examination of the claims of the patents in suit, that the problem being solved exists solely in the realm of computers and technology, and the solutions of the patents in suit are solely computer- and technology-based.

14. Not only do the claims of the patents in suit solve a particular problem with computer searches using computer- and technology-based solutions, they are limited to a particular application – that is, matching buyer offers to seller bids (for example, items offered for sale).

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 8,793,237)

General Allegations

15. Plaintiff incorporates paragraphs 1 through 14 herein by reference.

16. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

17. Plaintiff is the owner of the '237 Patent with sole rights to enforce the '237 Patent and sue infringers.

18. The '237 Patent issued on July 29, 2014. It is valid and enforceable, and it was duly issued in full compliance with Title 35 of the United States Code.

19. The United States Patent and Trademark Office issued the '237 Patent after the United States Supreme Court's decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014).

Allegations of Direct Infringement

20. Defendant has infringed and continues to directly infringe one or more claims of the '237 Patent, including at least Claim 10.

21. Defendant has committed direct infringement by its actions that comprise using one or more websites that utilize one or more methods described in the '237 Patent, including at least the method described in Claim 10 of the '237 Patent. Such websites are defined as the "Accused Instrumentalities." A representative example of an infringing website of Defendant, which is an Accused Instrumentality, is www.sheplers.com. This website infringes the '237 Patent in both a web browser and a mobile browser.

22. The infringement contentions and claim charts that will be served pursuant to Local Patent Rule 3-1 are incorporated into the Complaint by reference. Further, a preliminary, exemplary, detailed claim chart showing infringement of the '237 Patent by the Accused Instrumentalities is attached as Exhibit E hereto.

COUNT II **(INFRINGEMENT OF U.S. PATENT NO. 8,880,497)**

General Allegations

23. Plaintiff incorporates paragraphs 1 through 14 herein by reference.

24. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

25. Plaintiff is the owner of the '497 Patent with sole rights to enforce the '497 Patent and sue infringers.

26. The '497 Patent issued on November 4, 2014. It is valid and enforceable, and it was duly issued in full compliance with Title 35 of the United States Code.

27. The United States Patent and Trademark Office issued the '497 Patent after the United States Supreme Court's decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014).

Allegations of Direct Infringement

28. Defendant has infringed and continues to directly infringe one or more claims of the '497 Patent, including at least Claim 1.

29. Defendant has committed direct infringement by its actions that comprise using one or more websites that utilize one or more methods described in the '497 Patent, including at least the method described in Claim 1 of the '497 Patent. Such websites are defined as the "Accused Instrumentalities." A representative example of an infringing website of Defendant, which is an Accused Instrumentality, is www.sheplers.com. This website infringes the '497 Patent in both a web browser and a mobile browser.

30. The infringement contentions and claim charts that will be served pursuant to Local Patent Rule 3-1 are incorporated into the Complaint by reference. Further, a preliminary, exemplary, detailed claim chart showing infringement of the '497 Patent by the Accused Instrumentalities is attached as Exhibit F hereto.

COUNT III **(INFRINGEMENT OF U.S. PATENT NO. 9,069,860)**

General Allegations

31. Plaintiff incorporates paragraphs 1 through 14 herein by reference.

32. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

33. Plaintiff is the owner of the '860 Patent with sole rights to enforce the '860 Patent and sue infringers.

34. The '860 Patent issued on June 30, 2015. It is valid and enforceable, and it was duly issued in full compliance with Title 35 of the United States Code.

35. The United States Patent and Trademark Office issued the '860 Patent after the United States Supreme Court's decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), and after the USPTO issued its 2014 Interim Guidance on Patent Subject Matter Eligibility.

Allegations of Direct Infringement

36. Defendant has infringed and continues to directly infringe one or more claims of the '860 Patent, including at least Claim 1.

37. Defendant has committed direct infringement by its actions that comprise using one or more websites that utilize one or more methods described in the '860 Patent, including at least the method described in Claim 1 of the '860 Patent. Such websites are defined as the "Accused Instrumentalities." A representative example of an infringing website of Defendant, which is an Accused Instrumentality, is www.sheplers.com. This website infringes the '860 Patent in both a web browser and a mobile browser.

38. The infringement contentions and claim charts that will be served pursuant to Local Patent Rule 3-1 are incorporated into the Complaint by reference. Further, a preliminary, exemplary, detailed claim chart showing infringement of the '860 Patent by the Accused Instrumentalities is attached as Exhibit G hereto.

COUNT IV
(INFRINGEMENT OF U.S. PATENT NO. 9,378,521)

General Allegations

39. Plaintiff incorporates paragraphs 1 through 14 herein by reference.

40. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

41. Plaintiff is the owner of the '521 Patent with sole rights to enforce the '521 Patent and sue infringers.

42. The '521 Patent issued on June 28, 2016. It is valid and enforceable, and it was duly issued in full compliance with Title 35 of the United States Code.

43. The United States Patent and Trademark Office issued the '521 Patent after the United States Supreme Court's decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014), and after the USPTO issued its 2014 Interim Guidance on Patent Subject Matter Eligibility, its July 2015 Update on Subject Matter Eligibility, and its May 2016 Subject Matter Eligibility Update.

Allegations of Direct Infringement

44. Defendant has infringed and continues to directly infringe one or more claims of the '521 Patent, including at least Claim 1.

45. Defendant has committed direct infringement by its actions that comprise using one or more websites that utilize one or more methods described in the '521 Patent, including at least the method described in Claim 1 of the '521 Patent. Such websites are defined as the "Accused Instrumentalities." A representative example of an infringing website of Defendant, which is an Accused Instrumentality, is www.sheplers.com. This website infringes the '521 Patent in both a web browser and a mobile browser.

46. The infringement contentions and claim charts that will be served pursuant to Local Patent Rule 3-1 are incorporated into the Complaint by reference. Further, a preliminary, exemplary, detailed claim chart showing infringement of the '521 Patent by the Accused Instrumentalities is attached as Exhibit H hereto.

WILLFULNESS AND ENHANCED DAMAGES

47. Plaintiff incorporates paragraphs 1 through 46 herein by reference.

48. Defendant has had knowledge of the '237 Patent since October 2014, when Plaintiff sent Defendant a letter requesting that Defendant take a license to the '237 Patent.

49. Defendant has had knowledge of each of the other patents in suit since the date of service of the original Complaint in this case, if not before.

50. Plaintiff provided Defendant with preliminary, exemplary, detailed claim charts showing Defendant's infringement of each of the patents in suit on July 28, 2016.

51. Despite these facts, Defendant has not ceased its infringing activities.

52. In addition, to date Defendant has litigated this case in an unreasonable manner. For example, even though (a) all four patents in suit were issued by the United States Patent and Trademark Office after the United States Supreme Court's decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014); (b) the '860 Patent was issued after the USPTO issued its 2014 Interim Guidance on Patent Subject Matter Eligibility; (c) the '521 Patent was issued after the USPTO issued its 2014 Interim Guidance on Patent Subject Matter Eligibility, its July 2015 Update on Subject Matter Eligibility, and its May 2016 Subject Matter Eligibility Update; and (d) the content of each patent in suit, on its face, shows that it is subject matter eligible under controlling law, Defendant filed a motion to dismiss challenging the subject matter eligibility of the patents in suit. For Defendant to be correct, the United States Patent and Trademark Office would have to

have been wrong not once or twice, but four times, in issuing the patents in suit. In addition, Defendant's motion to dismiss failed to acknowledge that each patent in suit was issued by the USPTO post-*Alice*, failed to cite a single case dated later than 2014 despite the fact that subject matter eligibility has been a "hot" area of patent law in the past two years, failed to cite or attempt to distinguish the key applicable Federal Circuit cases upholding the subject matter eligibility of software patents (*DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014); *Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1367 (Fed. Cir. 2016); *Bascom Global Internet Servs. v. AT&T Mobility LLC*, ___ F.3d ___, 2016 WL 3514158 (Fed. Cir. 2016)), and failed to cite a single case from this District. Also, Defendant failed to even respond to Plaintiff's licensing offer under its Early Licensing Program. Upon information and belief based on Defendant's actions to date, Defendant will continue to litigate this case in an unreasonable manner.

53. Defendant's actions are willful, wanton, malicious bad-faith, deliberate consciously wrongful, flagrant, and/or characteristic of a pirate.

54. Plaintiff is entitled to a finding of willful infringement and enhanced damages under 35 U.S.C. § 284, and it is also entitled to a finding of exceptional case and an award of attorneys' fees under 35 U.S.C. § 285.

IRREPARABLE HARM

55. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of all issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

- a) Enter judgment for Plaintiff on this Complaint on all causes of action asserted herein;
- b) Enjoin Defendant, its agents, officers, servants, employees, attorneys and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent Nos. 8,793,237, 8,880,497, 9,069,860, and 9,378,521 (or, in the alternative, awarding Plaintiff a running royalty from the time of judgment going forward);
- c) Award Plaintiff damages resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;
- d) Find that Defendant's infringement was willful and award Plaintiff enhanced damages under 35 U.S.C. § 284;
- e) Declare this an "exceptional case" pursuant to 35 U.S.C. § 285 and award Plaintiff its attorneys' fees and any other appropriate relief;
- f) Award Plaintiff pre-judgment and post-judgment interest and costs; and
- g) Award Plaintiff such further relief to which the Court finds Plaintiff entitled under law or equity.

Dated: September 12, 2016

Respectfully submitted,

/s/ Craig Tadlock

Craig Tadlock
State Bar No. 00791766
TADLOCK LAW FIRM PLLC
2701 Dallas Parkway, Suite 360
Plano, Texas 75093
903-730-6789
craig@tadlocklawfirm.com

*Attorney for Plaintiff Semantic Search
Technologies LLC*

CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on September 12, 2016.

/s/ Craig Tadlock
Craig Tadlock