

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

**CHARLES C. FREENY III, BRYAN E.
FREENY, and JAMES P. FREENY,**

Case No. 16-CV-01052

Plaintiffs,

JURY TRIAL DEMANDED

v.

**SEARS, ROEBUCK AND CO. and
SEARS HOLDINGS MANAGEMENT
CORPORATION,**

Defendants.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiffs Charles C. Freeny III, Bryan E. Freeny, and James P. Freeny (collectively “Plaintiffs”), for their Complaint against Defendants Sears, Roebuck and Co. and Sears Holdings Management Corporation, hereby allege as follows:

THE PARTIES

1. Plaintiff Charles C. Freeny III is an individual residing in Flower Mound, Texas.
2. Plaintiff Bryan E. Freeny is an individual residing in Ft. Worth, Texas.
3. Plaintiff James P. Freeny is an individual residing in Spring, Texas.
4. On information and belief, Defendant Sears, Roebuck and Co. is a corporation organized and existing under the laws of the State New York with a place of business located at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Sears, Roebuck and Co. may be served with process through its registered agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201.
5. On information and belief, Defendant Sears Holdings Management Corporation is a corporation organized and existing under the laws of the State of Delaware, with its principal

place of business located at 3333 Beverly Road, Hoffman Estates, Illinois 60179. Sears Holdings Management Corporation may be served with process through its registered agent CT Corporation System, 1999 Bryan St., Suite 900, Dallas, TX 75201.

6. On information and belief, Defendants Sears, Roebuck and Co. and Sears Holdings Management Corporation (collectively “Sears”) own and operate retail department stores located in this judicial district and throughout the United States, including a store located at 3510 McCann Road, Longview, Texas 75605.

7. On information and belief, Sears operates an online retail website at the URL www.sears.com through which visitors to the site can view and purchase over the Internet products that are also sold at Sears’ retail department stores.

JURISDICTION AND VENUE

8. This is an action for patent infringement arising under the Patent Act, 35 U.S.C. §§101 et seq. This Court has jurisdiction over Plaintiffs’ federal law claims under 28 U.S.C. §§1331 and 1338(a).

9. This Court has specific and/or general personal jurisdiction over Sears because it has committed acts giving rise to this action within this judicial district and/or has established minimum contacts within Texas and within this judicial district such that the exercise of jurisdiction over it would not offend traditional notions of fair play and substantial justice.

10. Venue is proper in this District pursuant to 28 U.S.C. §§1391(b)-(c) and 1400(b) because Sears has committed acts within this judicial district giving rise to this action, and continues to conduct business in this district, and/or has committed acts of patent infringement within this District giving rise to this action.

FACTUAL BACKGROUND

11. On June 13, 2000, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,076,071 (“the ’071 patent”), entitled “Automated Synchronous Product Pricing and Advertising System.” A true and correct copy of the ’071 patent is attached hereto as **Exhibit A**.

12. On January 28, 2003, the United States Patent and Trademark Office duly and lawfully issued United States Patent Number 6,513,016 (“the ’016 patent”) entitled “Automated Synchronous Product Pricing and Advertising System.” A true and correct copy of the ’016 patent is attached hereto as **Exhibit B**.

13. The ’071 and ’016 patents describe, among other things, automated product pricing systems in which product pricing and advertising information at multiple physical store locations can be managed from a central location and updated automatically and efficiently through a computer network. These systems include the use of electronic product pricing units inside the physical stores to display information regarding products that are available at the store, such as the price of the product and other advertising information for the customer. The electronic pricing units as well as the checkout stations at the store can be updated with new prices and/or advertising information in response to instructions sent from a central control system computer. The system can also be connected to and synchronized with a virtual store system such as an online retail website through which users can browse and purchase products over the Internet.

14. The named inventor of the ’071 and ’016 patents is Charles C. Freeny, Jr., who is now deceased.

15. Plaintiffs are the sons of Charles C. Freeny, Jr., and Plaintiffs are the owners and

assignees of all right, title and interest in and to the '071 and '016 patents, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

16. Plaintiffs have complied with the requirements of 35 U.S.C. § 287 with respect to the '071 and '016 patents.

17. Sears uses electronic product pricing units at its physical stores to display pricing and other information regarding the products that are sold at the stores. For example, Sears advertises that it uses product pricing units such as the ones depicted in the following photographs at its stores:



New digital signs

Source: <http://blog.searsholdings.com/inside-shc/shopping-for-appliances-made-easier-at-sears-with-digital-product-signs/>

18. The prices advertised on the product pricing units at Sears' physical stores are synchronized with the prices stored and used at the electronic cash registers and store checkout stations within the store when a customer is completing a transaction at the store. The prices are also synchronized with the prices advertised on Sears' online retail website. These prices are periodically updated automatically based on instructions sent from a central computer. For example, on its website at the URL <http://blog.searsholdings.com/inside-shc/shopping-for->

appliances-made-easier-at-sears-with-digital-product-signs/, Sears states:

At Sears Holdings, we continuously seek new ways to make shopping more convenient for our members. We also look for ways to reduce manual tasks by automating them for our store associates so they can spend more time assisting our members.

Last year, we deployed new digital price signs in the Home Appliances department at more than 300 Sears stores. These digital signs ensure that our members not only get the most accurate pricing, but also more product information such as description, color choices, specifications, reviews and ratings. It also enables our associates to focus their attention on finding the right products and meeting the needs of our members rather than manually changing signs when prices fluctuate.

...

Among the many benefits of this technology, we can now quickly change pricing to provide the best value or share helpful product information within seconds as members research top appliance brands we carry.

COUNT I

(INFRINGEMENT OF U.S. PATENT NO. 6,076,071)

19. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

20. On information and belief, Sears has directly infringed and continues to directly infringe one or more claims of the '071 patent, including claim 24, in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using in its retail stores located in this judicial district and throughout the United States automated product pricing systems in which product pricing and advertising information at multiple physical and virtual store locations can be managed from a central location and updated automatically through a computer network.

21. On information and belief, Sears will continue to infringe the '071 patent unless enjoined by this Court.

22. Sears' acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Sears' infringement of Plaintiffs' rights under the '071 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

COUNT II

(INFRINGEMENT OF U.S. PATENT NO. 6,513,016)

23. Plaintiffs re-allege and incorporate by reference the allegations set forth in the Paragraphs above as if fully set forth herein.

24. On information and belief Sears has directly infringed and continues to directly infringe one or more claims of the '016 patent, including claim 8, in the State of Texas, in this judicial district, and elsewhere in the United States by, among other things, making and using in its retail stores located in this judicial district and throughout the United States automated product pricing systems in which product pricing and advertising information at multiple physical store locations can be managed from a central location and updated automatically through a computer network.

25. On information and belief, Sears will continue to infringe the '016 patent unless enjoined by this Court.

26. Sears' acts of infringement have damaged Plaintiffs in an amount to be proven at trial, but in no event less than a reasonable royalty. Sears' infringement of Plaintiffs' rights under the '016 patent will continue to damage Plaintiffs, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that this Court enter judgment against Sears as follows:

- a. For judgment that Sears has infringed and continues to infringe the claims of the '071 and '016 patents;
- b. For a permanent injunction against Sears and its respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement of the '071 and '016 patents;
- c. For an accounting of all damages caused by Sears' acts of infringement;
- d. For a judgment and order requiring Sears to pay Plaintiffs' damages, costs, expenses, and pre- and post-judgment interest for their infringement of the '071 and '016 patents as provided under 35 U.S.C. § 284;
- e. For a judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiffs their reasonable attorneys' fees; and
- f. For such other relief at law and in equity as the Court may deem just and proper.

DEMAND FOR A JURY TRIAL

Plaintiffs demand a trial by jury of all issues triable by a jury.

Dated: September 27, 2016

Respectfully submitted,

/s/ Christopher D. Banys
Christopher D. Banys - *Lead Attorney*

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