

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

AERITAS, LLC,

Plaintiff,

v.

WALGREEN CO.,

Defendant.

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Civil Action No. 6:16-cv-1283

Jury Trial Demanded

ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Aeritas, LLC (“Aeritas” or “Plaintiff”) files this Complaint for patent infringement against Defendant Walgreen Co. (“Walgreens” or “Defendant”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq.*

PARTIES

2. Aeritas is a limited liability company organized and existing under the laws of the State of Texas, with its principal place of business in Dallas, Texas and its registered agent at 15950 Dallas Parkway, Suite 225, Dallas, TX 75248.

3. On information and belief, Walgreens is a corporation organized and existing under the laws of the State of Illinois, with a principle place of business at 200 Wilmot Road, Deerifield, IL 60015.

4. Walgreens has been registered to do business in Texas since at least 1984 and has identified the following registered agent in Texas: Prentice Hall Corporation System, 211 E. 7th Street, Suite 620, Austin, TX 78701.

JURISDICTION AND VENUE

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

6. Upon information and belief, Walgreens is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and this judicial district (“District”) and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

7. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400. Upon information and belief, Walgreens has purposely and repeatedly availed itself of the privilege of doing business within the District, and a substantial part of the events giving rise to the claims herein occurred in this District.

ASSERTED PATENTS

8. On April 27, 2010, United States Patent No. 7,706,819 (the “‘819 patent”) was duly and legally issued for a “Mixed-Mode Interaction.” A true and correct copy of the ‘819 patent is attached hereto as Exhibit A. Aeritas is the owner of all right, title and interest in and to the ‘819 patent.

9. On November 8, 2011, United States Patent No. 8,055,285 (the “‘285 patent”) was duly and legally issued for a “Mixed-Mode Interaction.” A true and correct copy of the ‘285 is attached hereto as Exhibit B. Aeritas is the owner of all right, title and interest in and to the ‘285 patent.

10. On July 12, 2016, United States Patent No. 9,390,435 (the “‘435 patent”) was duly and legally issued for a “Mixed-Mode Interaction.” A true and correct copy of the ‘435 patent is attached hereto as Exhibit C. Aeritas is the owner of all right, title and interest in and to the ‘435 patent.

11. The '819, '285, and '435 patents ("Asserted Patents") were invented by Malik Mamdani, Patrick Johnson, Kevin Bomar, Curtis Grant, and Tim Whatley. Mr. Mamdani lives in Dallas, Texas. Mr. Johnson lives in Trophy Club, Texas. Mr. Bomar lives in Weatherford, Texas. Mr. Grant lives in Flower Mound, Texas. Mr. Whatley lives in Athens, Texas. The Asserted Patents were prosecuted by David Judson, with an office in Dallas, Texas.

BACKGROUND

12. Aeritas developed its mobile device location-based information service based on research and development activities that began in early 2000. In recognition of its pioneering efforts in this field, the United States Patent & Trademark Office issued the inventors several U.S. patents directed to the Aeritas's innovative technology platform, service and notification method. These include the Asserted Patents.

13. Walgreens is one of the largest drugstore chains in the United States with more than 8,000 stores in all 50 states, the District of Columbia, Puerto Rico, and the U.S Virgin Islands (<http://news.walgreens.com/fact-sheets/about-walgreens/>), including one or more stores in this District.

14. Walgreens makes award-winning mobile apps available to its customers (<http://news.walgreens.com/fact-sheets/about-walgreens/>). The apps include IOS and Android apps relating to Walgreens-branded stores (https://www.walgreens.com/topic/apps/learn_about_mobile_apps.jsp) ("Walgreens App"), and an IOS app relating to Duane-Reade branded stores (<https://www.walgreens.com/topic/duane-reade/duane-reade.jsp>) ("Duane Reade App"). The Apple and Google app stores identify Defendant as the provider of both the Walgreens App and the Duane Reade App.

15. Walgreen's operation of the Walgreens App and the Duane Reade App (collectively, "Accused Instrumentalities") infringes the Asserted Patents.

**FIRST CLAIM FOR RELIEF
(Infringement of the '819 Patent)**

16. Aeritas incorporates paragraphs 1 through 15 as though fully set forth herein.

17. Walgreens has been and is now infringing one or more claims of the '819 patent under 35 U.S.C. § 271 by making and/or using the Walgreens App and the Duane Reade App.

18. More particularly, Walgreens infringes at least claim 17 of the '819 patent. Walgreens receives a non-verbal input (e.g., a product selection) from a mobile communications device on which the Accused Instrumentalities are installed. Data identifying a current location of the mobile communications device is received, information (e.g., availability of the product at a local store) that is a function of the input and the location is retrieved, and a non-verbal response (e.g., a map of nearby stores) is delivered to the mobile communications device by a notification server. The non-verbal response includes a drill-down menu by which additional information can be obtained (e.g., obtaining additional information about a particular store), and such additional information is provided to the mobile communications device.

19. Aeritas has been damaged by Walgreens' infringing activities and will be irreparably harmed unless those infringing activities are preliminarily and permanently enjoined by this Court.

**SECOND CLAIM FOR RELIEF
(Infringement of the '285 Patent)**

20. Aeritas incorporates paragraphs 1 through 15 as though fully set forth herein.

21. Walgreens has been and is now infringing one or more claims of the '285 patent under 35 U.S.C. § 271 by making and/or using the Walgreens App and the Duane Reade App.

22. More particularly, Walgreens infringes at least claim 1 of the ‘285 patent. Walgreens receives and stores an input in a user profile in a database, the input comprising consumer interest data (e.g., an item added to the cart). At a second time, data identifying a current location of the mobile communications device on which the Accused Instrumentalities are installed is obtained. Based on the input and location, Walgreens performs a search to locate pertinent information (e.g., a user can view items previously saved and check local inventory) and receives the results of such search. Walgreens then provides a notification to the mobile communications device.

23. Aeritas has been damaged by Walgreens’ infringing activities and will be irreparably harmed unless those infringing activities are preliminarily and permanently enjoined by this Court.

**THIRD CLAIM FOR RELIEF
(Infringement of the ‘435 Patent)**

24. Aeritas incorporates paragraphs 1 through 15 as though fully set forth herein.

25. Walgreens has been and is now infringing one or more claims of the ‘435 patent under 35 U.S.C. § 271 by making and/or using the Duane Reade App.

26. More particularly, Walgreens infringes at least claim 1 of the ‘435 patent. On information and belief, Walgreens employs a processor and computer memory holding computer program instructions to perform the functions described herein. Walgreens receives data indicating permission to provide a notification to a mobile device user in accordance with notification criteria (e.g., with “Notifications” settings). Walgreens determines a location of the mobile device and, based on the location and notification criteria, provides at least a visual alert notification (e.g., a mobile device alert). Walgreens receives second data as a result of an input being received at the mobile device (e.g., interaction with the notification and/or the app), retrieves

information associated with the input (e.g., item availability at nearby stores), and provides responsive information to the mobile device (e.g., an identification of nearby stores).

27. Aeritas has been damaged by Walgreens' infringing activities and will be irreparably harmed unless those infringing activities are preliminarily and permanently enjoined by this Court.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Aeritas hereby demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Aeritas requests that the Court enter a judgment in its favor and against Defendant as follows:

- A. Permanently enjoining Defendant, its agents, servants, and employees, and all those in privity with it or in active concert and participation with it, from engaging in acts of infringement of the Asserted Patents;
- B. Awarding Aeritas past and future damages together with prejudgment interest and post-judgment interest to compensate for the infringement of the patents-in-suit in accordance with 35 U.S.C. § 384;
- C. Declaring this case exceptional, pursuant to 35 U.S.C. § 285;
- D. Awarding Aeritas its costs (including expert fees), disbursements, and attorneys' fees; and
- E. Granting such further relief as this Court deems to be just and proper.

Dated: November 10, 2016

Respectfully submitted,

DELGIORNO IP LAW, PLLC

By:

A handwritten signature in black ink, appearing to read "Matthew DelGiorno", is written over a horizontal line.

Matthew DelGiorno
State Bar No. 24077131
matt@delgiornolaw.com

906 Granger Drive
Allen, TX 75013
Telephone: (214) 601-5390

**ATTORNEY FOR PLAINTIFF
AERITAS, LLC**