

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

TALSK RESEARCH INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 1:16-cv-02166

Honorable John J. Tharp Jr.

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Talsk Research Inc. (“Talsk”) for its Second Amended Complaint against Defendant Microsoft Corporation (“Microsoft”) states as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284 and 285.

THE PARTIES

2. Talsk is a Delaware corporation with its principal place of business in Chicago, Illinois.

3. Microsoft is a Washington corporation with its principal place of business at One Microsoft Way, Redmond, WA 98052.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this patent infringement action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Microsoft because, on information and belief, Microsoft has systematic and continuous contacts with Illinois and this judicial district

because Microsoft regularly transacts business in the State of Illinois and this judicial district and it has thereby purposefully availed itself of the benefits and protections of the laws of the State of Illinois. Furthermore, this Court has personal jurisdiction over Microsoft because, as described further below, Microsoft has committed acts of patent infringement giving rise to this action within the State of Illinois and has thus established minimum contacts such that the exercise of personal jurisdiction over Microsoft does not offend traditional notions of fair play and substantial justice.

6. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391 and 1400(b).

THE PATENT-IN-SUIT

7. On February 13, 2007, U.S. Patent Number 7,178,097 (the “‘097 Patent”), entitled “Method And System For Using A Communications Network To Archive And Retrieve Bibliography Information And Reference Material,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘097 Patent is attached as Exhibit A to this Complaint.

8. Prior to the claimed invention, as the Internet continued to grow as a publishing medium, a problem developed due to the “decay” of citations in online references. *See, e.g.* Exhs. G, H.

9. The innovations disclosed in the ‘097 Patent, through the implementation of computer software in the context of online or electronic publishing, provide a specific, technical solution (*e.g.*, enabling an author of a manuscript to reference a webpage and subsequently enabling a reader of the manuscript to retrieve the referenced webpage such that retrieval returns the information as it existed when originally referenced) to the Internet-related problem of “decay” of citations in online references. These innovations “relate[] generally to publishing

and, more particularly, to a method and system for using a communications network such as the Internet to archive and retrieve bibliography information and reference material cited in a manuscript.” (Ex. A, the ‘097 Patent at 1:9-13.) The innovative technical solution can be characterized as “using a communications network to archive and retrieve bibliography information and reference material from an Internet source such as a web site cited in a manuscript” or “provid[ing] a method and system for using a communications network to archive a copy of the information from an Internet source cited in a manuscript.” (*Id.* at 2:57-65.)

10. Talsk is the assignee and owner of all rights, title, and interests in the ‘097 Patent, including the right to assert all causes of action arising under the ‘097 Patent and the right to any remedies for infringement of the ‘097 Patent.

BACKGROUND FACTS

11. Srikrishna Talluri, also known as “Krish,” is the inventor of the systems and methods claimed in the ‘097 Patent.

12. Mr. Talluri applied for the ‘097 Patent on November 13, 2000.

13. As of the time the ‘097 Patent issued, Mr. Talluri had founded Business One, Inc., a predecessor to Talsk, which practiced the ‘097 Patent by offering to sell the “RefMArc” product.

14. As of 2012, Mr. Talluri had founded Talsk, which practiced the ‘097 Patent by offering to sell the “JotLingo” product.

15. JotLingo, which was derived from RefMarc, lets users take notes and save web-clips on the fly and access them from anywhere.

16. On May 14, 2005, Mr. Talluri met with Microsoft executive and current Microsoft chief executive officer, Satya Nadella, at a conference in Santa Clara, California. (Ex. B, June 3, 2005 E-mail from Talluri to Nadella.)

17. At the May 14, 2005 meeting, Mr. Talluri described the RefMArc product to Mr. Nadella, explaining that RefMArc was a web-based collaboration and productivity solution that could seamlessly archive and authenticate web-based content for easy sharing of the content among a group of users. (*Id.*)

18. After learning about RefMArc from Mr. Talluri, Mr. Nadella suggested to Mr. Talluri that Business One submit a proposal regarding RefMArc to Microsoft. (*Id.*)

19. On June 3, 2005, Business One submitted a proposal regarding RefMArc to Microsoft, in which it disclosed to Microsoft the working RefMArc system as claimed in the '097 patent. (*Id.*)

20. On June 15, 2007, Mr. Talluri met with Steve Ballmer, Microsoft's then chief executive officer, at a private reception before a conference in Novi, Michigan. (Ex. C, June 15, 2007 E-mail from Talluri to Ballmer.)

21. Mr. Ballmer requested that Mr. Talluri provide additional information to Microsoft outlining the benefits of the RefMArc product.

22. Mr. Ballmer acknowledged the meeting with Mr. Talluri when he stated in his keynote speech that he had met with six entrepreneurs from Michigan. Mr. Ballmer indicated that he would be doing whatever he could to help these six entrepreneurs.

23. Later on June 15, 2007, Mr. Talluri sent an e-mail to Mr. Ballmer stating in part: "our RefMArc product is an archival & collaborative solution that helps users in several

verticals archive a copy of web-based and other transient materials for subsequent use and seamlessly share the same.” (*Id.*)

24. In the June 15, 2007 e-mail from Mr. Talluri to Mr. Ballmer, Mr. Talluri provided notice that “RefMArc is patent protected and the term of the patent is until the end of the year 2023. The addition of RefMArc as a built-in feature of Microsoft’s existing products would prove to be a major hurdle for other companies serving these market[s] and could lead to severe limitations, and modifications of competitors’ products.” (*Id.*)

25. On June 17, 2007, Mr. Ballmer responded to Mr. Talluri’s June 15, 2007 e-mail, stating in part that “[Microsoft] will follow up thanks[.]” (*Id.*)

26. On October 3, 2007, Mr. Talluri sent an e-mail to George Morrison, a Business Development Manager at Microsoft and Jay Henningsen, another Microsoft employee, detailing RefMArc’s features, including the ability to archive web-based content. (Ex. D, October 3, 2007 E-mail from Talluri to Morrison.) Further, Mr. Talluri explained Messrs. Morrison and Henningsen how RefMArc could be integrated into various Microsoft Products, including OneNote and Internet Explorer. (*Id.*)

27. On October 16, 2007, Mr. Henningsen replied to Mr. Talluri, “At this point in time the [Microsoft] product groups are not willing to engage in deeper discussions [regarding RefMArc].” (Ex. D, October 16, 2007 E-mail from Henningsen to Talluri.)

28. In the October 16, 2007 e-mail from Mr. Henningsen to Mr. Talluri, Mr. Henningsen recommended that Mr. Talluri keep in touch because Microsoft’s plans and priorities could change. (*Id.*)

29. On June 12, 2012, Mr. Talluri sent an e-mail to Mr. Nadella describing JotLingo and requesting an opportunity to further discuss the product. (Ex. J, June 12, 2012 E-mail from Talluri to Nadella).

30. In the June 12, 2012 e-mail from Mr. Talluri to Mr. Nadella, Mr. Talluri attached a PowerPoint presentation, attached as Exhibit K, to the e-mail which discloses key features of Talsk's patented JotLingo product. (*Id.*)

31. On June 12, 2012, Mr. Talluri received a notice of electronic receipt, confirming that Mr. Nadella opened the June 12, 2012 e-mail. (Ex. J, June 12, 2012 E-mail from Nadella to Talluri.)

32. On October 13, 2013, Mr. Talluri wrote to Microsoft inquiring whether Microsoft was interested in acquiring the '097 patent. (Ex. E, January 31, 2014 E-mail from Evans to Talluri.)

33. On January 31, 2014, Microsoft responded to Mr. Talluri's e-mail, stating that "[a]fter a review of the patent in light of the products identified in your e-mail, Skydrive and OneNote, we find that the '097 patent is not of relevance to these Microsoft products." (*Id.*)

34. On May 27, 2015, Mr. Talluri sent an e-mail to Microsoft in which he stated: "I understand that quite a few changes have taken place since your e-mail from 16 months ago and notably, what I've predicted has now come to pass. The integration between Skydrive (now Onedrive) and OneNote that I predicted is now in place and it is clear that the OneNote product now writes over my US, Canadian and International patents. . . . More interestingly, the flow and screens of the product are remarkably similar to the one we shared and was evaluated by Microsoft." (Ex. F, May 27, 2015 E-Mail from Talluri to Evans.)

35. On June 4, 2015, Mr. Talluri sent an e-mail to Mr. Nadella, detailing Mr. Talluri's interaction with Mr. Ballmer in 2007 regarding RefMArc. (Ex. I, June 4, 2015 E-mail from Talluri to Satya.) Additionally, in the June 4, 2015 e-mail, Mr. Talluri stated that he was currently interacting with Jim Ross, an Assistant General Counsel at Microsoft, in regards to a potential license to Talsk's patents. (*Id.*)

36. Talsk's patented technology competes in a multi-billion-dollar market for collaborative, productivity software which includes Microsoft's OneNote, Web Clipper, and OneDrive products (the "Microsoft Reference Preservation System").

37. Under the leadership of Mr. Nadella, Microsoft has executed on the very strategy Mr. Talluri proposed to Microsoft—*i.e.*, integrating Talsk's patented technology into a productivity platform product that offers consumers a cloud-based collaborative solution across the Microsoft suite of products by incorporating the claimed features and capabilities in the Microsoft Reference Preservation System.

38. Notwithstanding Mr. Talluri's numerous discussions with Microsoft—and with full knowledge of the '097 patent, the scope of the '097 patent claims, and how and why the '097 patent claims cover the Microsoft Reference Preservation System—Microsoft has continued and does continue to infringe the '097 patent.

COUNT I – DIRECT INFRINGEMENT OF U.S. PATENT NO. 7,178,097
FOR USING THE CLAIMED METHOD

39. The allegations set forth in the foregoing paragraphs 1 through 38 are hereby re-alleged and incorporated by reference.

40. In violation of 35 U.S.C. §271(a), Microsoft has directly infringed and continues to directly infringe, literally, and under the doctrine of equivalents, one or more claims of the '097 Patent by making, using, offering for sale, selling, or importing Microsoft OneNote,

including OneNote Clipper (the “Microsoft Reference Preservation System”), in this judicial district and elsewhere in the United States (directly or through intermediaries), that perform the steps recited in at least Claims 8, 19, and 23 of the ‘097 Patent.

41. Microsoft directly infringes at least Claims 8, 19, and 23 of the ‘097 Patent by performing all of the steps of the claimed methods.

42. Microsoft directly infringes at least Claims 8, 19, and 23 of the ‘097 Patent by creating manuscripts in the Microsoft Reference Preservation System and then performing at least the steps recited in these claims to archive reference material contained in the manuscript or bibliography of the manuscript. Microsoft’s direct infringement includes, without limitation, Microsoft’s use of the Microsoft Reference Preservation System to conduct internal testing and Microsoft’s use of the Microsoft Reference Preservation System to publically demonstrate the Microsoft Reference Preservation System. *See, e.g.,* <https://blogs.msdn.microsoft.com/johnguin/2007/12/26/the-obligatory-end-of-the-year-summary-from-onenote-testing/> (last visited November 9, 2016) (Blog entry authored by a Microsoft employee detailing the testing performed on OneNote.)

43. Microsoft directly infringes, when, while testing the Microsoft Reference Preservation System, it authors a manuscript and uses a web site on the Internet as a reference for the manuscript.

44. Microsoft directly infringes when, while testing the Microsoft Reference Preservation System, it uses a first communications device (*e.g.*, a computer) that is connected to the Internet or world wide web to transmit or transfer the address or identification of the web site to a Microsoft database that is connected to the Internet or world wide web such that the Microsoft database obtains a copy of the web site such that the obtained web site is verbatim to

the web site as on the Internet or world wide web at the time the user transmitted or transferred the web site address or identification to the Microsoft database.

45. Microsoft directly infringes when, while testing the Microsoft Reference Preservation System, it associates or assigns a distinctive or unique key to the copy of the web site, which the Microsoft Reference Preservation System then stores, along with the copy of the web site, at or in the Microsoft database.

46. Microsoft directly infringes when, while testing the Microsoft Reference Preservation System, it associates or assigns a distinctive or unique key to the copy of the web site, which the Microsoft Reference Preservation System then stores, along with the copy of the web site, at or in the Microsoft database.

47. Microsoft directly infringes when, while testing the Microsoft Reference Preservation System, it cites the web site as being a reference for the manuscript, by listing identification of the web site along with the distinctive or unique key in the manuscript or bibliography of the manuscript.

48. Microsoft directly infringes when, while testing the Microsoft Reference Preservation System, it obtains the distinctive or unique key from the manuscript or bibliography of the manuscript and then transmits the distinctive or unique key to the Microsoft database using a second communications devices (*e.g.*, a computer) connected to the Internet or world wide web in order to request a copy of the web site.

49. Microsoft directly infringes when, while testing the Microsoft Reference Preservation System, the Microsoft database transmits or transfers a copy of the stored copy of the web site to Microsoft via the Internet or web and the second communications device in response to the Microsoft database receiving the distinctive or unique key from Microsoft such

that the copy of the web site transmitted or transferred from the Microsoft database to Microsoft is verbatim to the web site as on the Internet or web at the time Microsoft transmitted the web site address or identification to the Microsoft database.

50. Microsoft directly infringes dependent Claim 9 of the '097 Patent, when, while testing the Microsoft Reference Preservation system, it stores an immutable copy of the web site in the Microsoft Database.

51. Microsoft directly infringes dependent Claim 14 of the '097 Patent, when, while testing the Microsoft Reference Preservation System, it uses an e-mail as a reference for the manuscript, transmits a copy of the e-mail to the Microsoft database using the first communications device for storage of the copy of the e-mail by the database, and the database transmitting a copy of the e-mail to Microsoft via the Internet and the second communications device in response to the database receiving a request for a copy of the e-mail from Microsoft.

52. Microsoft directly infringes dependent Claim 15 of the '097 Patent when, while testing the Microsoft Reference Preservation System, it uses a digital file as a reference for the manuscript, transmits a copy of the digital file to the Microsoft database using the first communications device for storage of the copy of the digital file by the database, and the database transmitting a copy of the digital file to Microsoft via the Internet and the second communications device in response to the database receiving a request for a copy of the digital file from Microsoft.

53. Microsoft directly infringes dependent Claim 24 of the '097 Patent, when, while testing the Microsoft Reference Preservation System it accesses the Internet to located the web site prior to citing the web site in the manuscript.

54. In addition to directly infringing at least Claims 8, 19, and 23 of the '097 Patent by performing all of the steps of the claimed methods, Microsoft also directly infringes at least Claims 8, 19, and 23 of the '097 Patent by performing some of the claimed steps of the claimed methods and sufficiently directing and controlling individual and corporate users of the Microsoft Reference Preservation System (e.g., authors of and/or audiences to manuscripts) to perform the remaining claimed steps such that Microsoft is liable for the performance of these remaining, claimed steps by such individual and corporate users.

55. Users of the Microsoft Reference Preservation System include both corporate entities and persons, including, for example, Microsoft corporate customers and agents and/or employees of Microsoft's corporate customers that use the Microsoft Reference Preservation System.

56. Upon information and belief, Microsoft provides the Microsoft Reference Preservation System to its corporate customers at least through its Office 365 for Business suite of products, including Office 365 Business Essentials, Office 365 Business, Office 365 Business Premium, Office 365 Enterprise E1, Office 365 ProPlus, Office 365 Enterprise E3, and Office 365 Enterprise E5.

57. Microsoft directs and controls its individual and corporate users of the Microsoft Reference Preservation System to perform claimed steps of the '097 by, among other things, conditioning use of the Microsoft Reference Preservation System on performance of such steps.

58. Microsoft directs and controls its individual and corporate users of the Microsoft Reference Preservation System to perform of the claimed steps of the '097 by, among other things, conditioning the receipt of the benefits associated with Talsk's patented invention.—e.g.,

the benefit of referencing and archiving a web site for subsequent retrieval as bibliographical information—upon performance of claimed steps of the ‘097.

59. Microsoft establishes the manner and timing of the performance of the claimed steps of the ‘097 by its individual and corporate users of the Microsoft Reference Preservation System through at least its direct Microsoft customer support, the Microsoft Services Agreement, and by Microsoft user instructions which, among other things, describe how to use the Microsoft Reference Preservation System to obtain the benefit Talsk’s patented invention. *See, e.g.*, <https://support.office.com/en-us/onenote> (last visited November 11, 2016) (Microsoft web site offering help and support to OneNote users); <https://support.office.com/en-us/article/Create-hyperlinks-to-pages-sections-and-notebooks-35a2c5e3-87fd-400a-a4f5-ef82e778c208> (last visited November 11, 2016) (“In your notes, you can create hyperlinks that point to the pages and sections in Microsoft Office OneNote 2007 notebook”; “When you have finished creating all of the linked pages, you can move them to another location in your current notebook, such as their own reference section.”)¹; <https://support.office.com/en-us/article/eBook-OneNote-2016-Tips-Tricks-4e08cf8b-dc37-4229-bdef-1f580220b6f5?ui=en-US&rs=en-US&ad=US> (last visited November 11, 2016) (“eBook: OneNote 2016 Tips & Tricks”).

60. Microsoft directly infringes by directing or controlling users of the Microsoft Reference Preservation System to use the Microsoft Reference Preservation System to author a manuscript and use a web site on the Internet as a reference for the manuscript. *See, e.g.*, <https://support.office.com/en-us/article/What-is-OneNote-be6cc6cc-3ca7-4f46-8876-5000f013c563> (last visited November 7, 2016) (advertising that users can “use OneNote to take notes wherever [they] go”).

¹ This feature is also present in later versions of Microsoft OneNote, including at least, OneNote 2010, OneNote 2013, and OneNote 2016.

61. Microsoft directs and controls its individual and corporate users by conditioning use of the Microsoft Reference Preservation System on performance of authoring a manuscript and using a web site on the Internet as a reference of the manuscript by such users. Microsoft also directs and controls its individual and corporate users by conditioning receipt of the benefits associated with the Microsoft Reference Preservation System—the referencing and archiving of a web site for subsequent retrieval as bibliographical information—on performance of the patented steps by such users.

62. Microsoft directly infringes by directing and controlling users of the Microsoft Reference Preservation System to use a first communications device (*e.g.*, a computer) that is connected to the Internet or world wide web to transmit or transfer the address or identification of the web site to a Microsoft database that is connected to the Internet or world wide web such that the Microsoft database obtains a copy of the web site such that the obtained web site is verbatim to the web site as on the Internet or world wide web at the time the user transmitted or transferred the web site address or identification to the Microsoft database. *See, e.g.*, <https://support.office.com/en-us/article/Getting-Started-with-the-OneNote-Web-Clipper-5696609d-c5ae-4591-b3af-1f897cb6eda6> (last visited November 7, 2016) (instructing users to “click the OneNote Web Clipper icon and “[c]lick [f]ull page or [r]egion”).

63. Microsoft directs and controls its individual and corporate users by conditioning use of the Microsoft Reference Preservation System on performance of using a first communications device (*e.g.*, a computer) that is connected to the Internet or world wide web to transmit or transfer the address or identification of the web site to a Microsoft database that is connected to the Internet or world wide web such by such user. Microsoft also directs and controls its individual and corporate users by conditioning receipt of the benefits associated with

the Microsoft Reference Preservation System—the referencing and archiving of a web site for subsequent retrieval as bibliographical information—on performance of the at least the steps recited in the patented steps by such users.

64. Microsoft directly infringes by directing or controlling users of the Microsoft Reference Preservation System to associate or assign a distinctive or unique key to the copy of the web site, which the Microsoft Reference Preservation System then stores, along with the copy of the web site, at or in the Microsoft database. *See, e.g.*, https://sway.com/V2j-8IYIY4dntL_k (last visited November 7, 2016) (instructing users how to “[t]urn [their] notebook into a functional wiki by creating links to specific sections or pages”). The distinctive or unique key is a Microsoft created URL that links to another note within OneNote. *See, e.g.*, <https://support.office.com/en-us/article/Create-hyperlinks-to-pages-sections-and-notebooks-35a2c5e3-87fd-400a-a4f5-ef82e778c208> (last visited November 11, 2016) (instructing users how to “[c]reate hyperlinks to pages, sections, and notebooks”).

65. Microsoft directs and controls its individual and corporate users by conditioning use of the Microsoft Reference Preservation System on performance of associating or assigning a distinctive or unique key to the copy of the web site by such user. Microsoft also directs and controls its individual and corporate users by conditioning receipt of the benefits associated with the Microsoft Reference Preservation System—the referencing and archiving of a web site for subsequent retrieval as bibliographical information—on performance of the at least the steps recited in the patented steps by such users.

66. Microsoft directly infringes by directing or controlling users of the Microsoft Reference Preservation System to cite the web site as being a reference for the manuscript, by listing identification of the web site along with the distinctive or unique key in the manuscript or

bibliography of the manuscript. *See e.g.*, <https://support.office.com/en-us/article/Create-hyperlinks-to-pages-sections-and-notebooks-35a2c5e3-87fd-400a-a4f5-ef82e778c208> (last visited November 11, 2016) (“Create hyperlinks to pages, sections, and notebooks”).

67. Microsoft directs and controls its individual and corporate users by conditioning use of the Microsoft Reference Preservation System on performance of citing the web site as being a reference for the manuscript, by listing identification of the web site along with the distinctive or unique key in the manuscript or bibliography of the manuscript by such users. Microsoft also directs and controls its individual and corporate users by conditioning receipt of the benefits associated with the Microsoft Reference Preservation System—the referencing and archiving of a web site for subsequent retrieval as bibliographical information—on performance of the patented steps by such users.

68. Microsoft directly infringes by directing or controlling users of the Microsoft Reference Preservation System to obtain the distinctive or unique key from the manuscript or bibliography of the manuscript and then transmitting the distinctive or unique key to the Microsoft database using a second communications devices (*e.g.*, a computer) connected to the Internet or world wide web in order to request a copy of the web site that is verbatim to the web site as on the Internet or world wide web at the time another user of the Microsoft Reference Preservation System transmitted or transferred the web site address or identification to the Microsoft database. *See, e.g.*, <https://support.office.com/en-us/article/Share-a-OneNote-2016-for-Windows-notebook-with-other-people-d14b6033-7a95-4536-9216-bb0a5e0f8285> (last visited November 7, 2016) (“instructing users to “generate a link to [their] notebook so others can view or edit it”).

69. Microsoft directs and controls its individual and corporate users by conditioning use of the Microsoft Reference Preservation System on performance of obtaining the distinctive or unique key from the manuscript or bibliography of the manuscript and then transmitting the distinctive or unique key to the Microsoft database using a second communications devices (*e.g.*, a computer) connected to the Internet or world wide web in order to request a copy of the web site that is verbatim to the web site as on the Internet or world wide web at the time another user of the Microsoft Reference Preservation System transmitted or transferred the web site address or identification to the Microsoft database by such users. Microsoft also directs and controls its individual and corporate users by conditioning receipt of the benefits associated with the Microsoft Reference Preservation System—the referencing and archiving of a web site for subsequent retrieval as bibliographical information—on performance of the patented steps by such users.

70. Microsoft directly infringes, when after its individual or corporate users request the Microsoft database for the copy of the web site, the Microsoft database transmits or transfers a copy of the stored copy of the web site to its individual or corporate user via the Internet or web and the second communications device in response to the Microsoft database receiving the distinctive or unique key from the individual or corporate user such that the copy of the web site transmitted or transferred from the Microsoft database to the individual or corporate user is verbatim to the web site as on the Internet or web at the time the individual or corporate user who authored the note, transmitted the web site address or identification to the Microsoft database.

71. Microsoft directly infringes dependent Claim 9 of the '097 Patent by storing an immutable copy of the web site in the Microsoft Database upon an individual or corporate user

uses a first communications devices (*e.g.*, a computer) to transmit or transfer the address or identification of the web site to the Microsoft database. *See, e.g.*, <https://www.onenote.com/apps> (last visited November 7, 2016) (advertising that OneNote Web Clipper lets users “save webpages from [their] browser into [their] OneNote notebooks”).

72. Microsoft directly infringes dependent Claim 14 of the ‘097 Patent by directing or controlling users of the Microsoft Reference Preservation System to use an e-mail as a reference for the manuscript, the user transmitting a copy of the e-mail to the Microsoft database using the first communications device for storage of the copy of the e-mail by the database, and the database transmitting a copy of the e-mail to the audience via the Internet and the second communications device in response to the database receiving a request for a copy of the e-mail from the audience. *See, e.g.*, <https://www.onenote.com/EmailToOneNote> (last visited November 7, 2016) (advertising that users can “[s]ave emails to OneNote”).

73. Microsoft directs and controls its individual and corporate users by conditioning use of the Microsoft Reference Preservation System on performance of using an e-mail as a reference for the manuscript and transmitting a copy of the e-mail to the Microsoft database using the first communications device for storage of the copy of the e-mail by the database by such user, and the database transmitting a copy of the e-mail to the audience via the Internet and the second communications device in response to the database receiving a request for a copy of the e-mail from the audience. Microsoft also directs and controls its individual and corporate users by conditioning receipt of the benefits associated with the Microsoft Reference Preservation System—the referencing and archiving of a web site for subsequent retrieval as bibliographical information—on performance of the patented steps by such users.

74. Microsoft directly infringes dependent Claim 15 of the '097 Patent by directing or controlling users of the Microsoft Reference Preservation System to use a digital file as a reference for the manuscript, the user transmitting a copy of the digital file to the Microsoft database using the first communications device for storage of the copy of the digital file by the database, and the database transmitting a copy of the digital file to the audience via the Internet and the second communications device in response to the database receiving a request for a copy of the digital file from the audience. *See, e.g.*, <https://support.office.com/en-us/article/Getting-Started-with-the-OneNote-Web-Clipper-5696609d-c5ae-4591-b3af-1f897cb6eda6> (last visited November 7, 2016) (advertising OneNote Web Clipper as a way to “[c]ollect inspiring images and ideas from around the Web”).

75. Microsoft directs and controls its individual and corporate users by conditioning use of the Microsoft Reference Preservation System on performance of using a digital file as a reference for the manuscript and transmitting a copy of the digital file to the Microsoft database using the first communications device for storage of the copy of the digital file by the database by such user, and the database transmitting a copy of the digital file to the audience via the Internet and the second communications device in response to the database receiving a request for a copy of the digital file from the audience. Microsoft also directs and controls its individual and corporate users by conditioning receipt of the benefits associated with the Microsoft Reference Preservation System—the referencing and archiving of a web site for subsequent retrieval as bibliographical information—on performance of the patented steps by such users.

76. Microsoft directly infringes dependent Claim 24 of the '097 Patent by directing or controlling users of the Microsoft Reference Preservation System to access the Internet to located the web site prior to citing the web site in the manuscript.

77. Microsoft directs and controls its individual and corporate users by conditioning use of the Microsoft Reference Preservation System on performance of accessing the Internet to locate the web site prior to citing the web site in the manuscript by such user. Microsoft also directs and controls its individual and corporate users by conditioning receipt of the benefits associated with the Microsoft Reference Preservation System—the referencing and archiving of a web site for subsequent retrieval as bibliographical information—on performance of the patented steps by such users.

78. Microsoft has directly infringed, and still is directly infringing the ‘097 Patent in this District and elsewhere by marketing, promoting, soliciting, importing, offering for sale, selling and distributing the Microsoft Reference Preservation System, that when used as intended and directed by Microsoft, infringes at Claims 8, 19, and 23 of the ‘097 Patent, either literally or under the doctrine of equivalents.

79. Microsoft’s infringement has injured or will continue to injure Talsk and Talsk is entitled to recover damages adequate to compensate it for Microsoft’s infringement, which in no event can be less than a reasonable royalty.

80. Talsk is entitled to damages in accordance with 35 U.S.C. §§ 271, 281, 284, and 287.

**COUNT II – INDIRECT INFRINGEMENT OF U.S. PATENT NO. 7,178,097
FOR USING THE CLAIMED METHOD**

81. The allegations set forth in the foregoing paragraphs 1 through 80 are hereby alleged and incorporated by reference.

82. In violation of 35 U.S.C. §271(b), Microsoft has induced and continues to induce its corporate users of the Microsoft Reference Preservation System to infringe at least Claims 8, 18, and 23 of the ‘097 Patent.

83. Corporate users of the Microsoft Reference Preservation System directly infringe at least Claims 8, 19, and 23 of the '097 Patent.

84. Microsoft induces its corporate users to infringe at least Claims 8, 19, and 23 of the '097 Patent by actively encouraging users to use the Microsoft Reference Preservation System in an infringing manner through advertising and instructing its corporate users how use the Microsoft Reference Preservation System in an infringing manner through advertising and instructions available on the Microsoft web site. *See, e.g.*, <https://www.onenote.com/clipper> (last visited November 7, 2016) (advertising that with OneNote Web Clipper, users can “[q]uickly capture any webpage to OneNote, where [they] can easily edit, annotate, or share it”); <https://support.office.com/en-us/onenote> (last visited November 11, 2016) (Microsoft web site offering help and support to OneNote users); <https://support.office.com/en-us/article/Create-hyperlinks-to-pages-sections-and-notebooks-35a2c5e3-87fd-400a-a4f5-ef82e778c208> (last visited November 11, 2016) (“In your notes, you can create hyperlinks that point to the pages and sections in Microsoft Office OneNote 2007 notebook”; “When you have finished creating all of the linked pages, you can move them to another location in your current notebook, such as their own reference section.”)²; <https://support.office.com/en-us/article/eBook-OneNote-2016-Tips-Tricks-4e08cf8b-dc37-4229-bdef-1f580220b6f5?ui=en-US&rs=en-US&ad=US> (last visited November 11, 2016) (“eBook: OneNote 2016 Tips & Tricks”).

85. Upon information and belief, Microsoft induces its corporate users to infringe at least Claims 8, 19, and 23 of the '097 Patent by actively encouraging users to use the Microsoft Reference Preservation System in an infringing manner by providing training and training

² This feature is also present in later versions of Microsoft OneNote, including at least, OneNote 2010, OneNote 2013, and OneNote 2016.

materials that instruct its corporate users on how to use the Microsoft Reference Preservation System in an infringing manner.

86. Upon information and belief, at least in certain instances, Microsoft provides training and training material to its corporate customers through its “FastTrack” program. *See, e.g.,* <http://fasttrack.microsoft.com/fasttrack-faq> (last visited November 11, 2016) (details the services provided by Microsoft FastTrack).

87. Upon information and belief, Microsoft induces its corporate users to infringe at least Claims 8, 19, and 23 of the ‘097 Patent by actively encouraging users to use the Microsoft Reference Preservation System in an infringing manner by providing customer support to its corporate users on how to use the Microsoft Reference Preservation System in an infringing manner.

88. Microsoft induces its corporate users to use the Microsoft Reference Preservation System to author a manuscript and use a web site on the Internet as a reference for the manuscript through advertising and instructions available on the Microsoft web site. *See, e.g.,* <https://support.office.com/en-us/article/What-is-OneNote-be6cc6cc-3ca7-4f46-8876-5000f013c563> (last visited November 7, 2016) (advertising that users can “use OneNote to take notes wherever [they] go”).

89. Microsoft induces its corporate users to use the Microsoft Reference Preservation System to use a first communications device (*e.g.*, computer) that is connected to the Internet or world wide web to transmit or transfer the address or identification of the web site to a Microsoft database that is connected to the Internet or world wide web, such that the Microsoft database obtains a copy of the web site, wherein that the obtained web site is verbatim to the web site as on the Internet or world wide web at the time the user transmitted or transferred the

web site address or identification to the Microsoft database. *See, e.g.,* <https://support.office.com/en-us/article/Getting-Started-with-the-OneNote-Web-Clipper-5696609d-c5ae-4591-b3af-1f897cb6eda6> (last visited November 7, 2016) (instructing users to “click the OneNote Web Clipper icon and “[c]lick [f]ull page or [r]egion”).

90. Microsoft induces its corporate users to use the Microsoft Reference Preservation System to associate or assign a distinctive or unique key to the copy of the web site, which the Microsoft Reference Preservation System then stores, along with the copy of the web site, at or in the Microsoft database. *See, e.g.,* https://sway.com/V2j-8lYIY4dntL_k (last visited November 7, 2016) (instructing users how to “[t]urn [their] notebook into a functional wiki by creating links to specific sections or pages”). The distinctive or unique key is a Microsoft created URL that links to another note within OneNote. *See, e.g.,* <https://support.office.com/en-us/article/Create-hyperlinks-to-pages-sections-and-notebooks-35a2c5e3-87fd-400a-a4f5-ef82e778c208> (last visited November 11, 2016) (instructing users how to “[c]reate hyperlinks to pages, sections, and notebooks”).

91. Microsoft induces its corporate users to use the Microsoft Reference Preservation System to cite the web site as being a reference for the manuscript, by listing identification of the web site along with or without the distinctive or unique key in the manuscript or bibliography of the manuscript.

92. Microsoft induces its corporate users to use the Microsoft Reference Preservation System to obtain the distinctive or unique key from the manuscript or bibliography of the manuscript and then transmitting the distinctive or unique key to the Microsoft database using a second communications devices (e.g., a computer) connected to the Internet or world wide web in order to request a copy of the web site that is verbatim to the web site as on the Internet or

world wide web at the time another user of the Microsoft Reference Preservation System transmitted or transferred the web site address or identification to the Microsoft database. *See, e.g.,* <https://support.office.com/en-us/article/Share-a-OneNote-2016-for-Windows-notebook-with-other-people-d14b6033-7a95-4536-9216-bb0a5e0f8285> (last visited November 7, 2016) (“instructing users to “generate a link to [their] notebook so others can view or edit it”).

93. Microsoft has induced, and still is inducing, the infringement of the ‘097 Patent in this District and elsewhere by marketing, promoting, soliciting, importing, offering for sale, selling and distributing the Microsoft Reference Preservation System, that when used as intended and directed by Microsoft, infringes at Claims 8, 19, and 23 of the ‘097 Patent, either literally or under the doctrine of equivalents.

94. Microsoft’s infringement has injured or will continue to injure Talsk and Talsk is entitled to recover damages adequate to compensate it for Microsoft’s infringement, which in no event can be less than a reasonable royalty.

95. Talsk is entitled to damages in accordance with 35 U.S.C. §§ 271, 281, 284, and 287.

**COUNT III – DIRECT INFRINGEMENT OF U.S. PATENT NO. 7,178,097
FOR USING THE CLAIMED SYSTEM**

96. The allegations set forth in the foregoing paragraphs 1 through 95 are hereby re-alleged and incorporated by reference.

97. In violation of 35 U.S.C. §271(a), Microsoft has directly infringed and continues to directly infringe, literally, and under the doctrine of equivalents, one or more claims of the ‘097 Patent by making, using, offering for sale, selling, or importing Microsoft OneNote, including OneNote Clipper (the “Microsoft Reference Preservation System”), in this judicial

district and elsewhere in the United States (directly or through intermediaries), that perform the steps recited in at least Claims 1 and 19 of the '097 Patent.

98. When using the Microsoft Reference Preservation System, Microsoft uses a Microsoft database connected to the internet.

99. When using the Microsoft Reference Preservation System, Microsoft puts into service a first communications device (*e.g.*, a first Microsoft corporate user computer) which is connected to the Microsoft Database through the Internet and adapted for use by a Microsoft corporate user to author a transcript and transmit the address of a web site that is referenced in the transcript to the Microsoft database.

100. When using the Microsoft Reference Preservation System, Microsoft uses a Microsoft database which is adapted for use to store a verbatim copy of a website (as it existed when an address to the website is transmitted to the database by the Microsoft corporate user (who is the author of the manuscript) along with an associated, distinctive key that identifies the verbatim copy.

101. When using the Microsoft Reference Preservation System, Microsoft puts into service a second communications device (*e.g.*, a second Microsoft corporate user computer) which is connected to the Internet and is adapted for use by a Microsoft corporate user (who is the audience for the manuscript) to transmit the associated, distinctive key that identifies the verbatim copy of the website.

102. When using the Microsoft Reference Preservation System, Microsoft uses a Microsoft database which is connected to the Internet and adapted for use to transmit the stored, verbatim copy of the website in response to receiving the associated, distinctive key that identifies the verbatim copy.

103. When Microsoft uses the Microsoft Reference Preservation System to infringe at least Claims 1 and 18 of the '097 Patent, the transmission or transfer of a web site address or reference to or from the first or second communications devices causes the devices to act for their intended purposes to transmit a verbatim copy of the web site or associated, distinctive key.

104. Under 35 U.S.C. §271(a), Microsoft, by using a webserver that hosts the Microsoft Reference Preservation System and delivers web pages containing embedded programming, puts the system as a whole into service so that Microsoft may benefit from the system.

105. Microsoft's infringement has injured or will continue to injure Talsk and Talsk is entitled to recover damages adequate to compensate it for Microsoft's infringement, which in no event can be less than a reasonable royalty.

106. Talsk is entitled to damages in accordance with 35 U.S.C. §§ 271, 281, 284, and 287.

**COUNT IV – INDIRECT INFRINGEMENT OF U.S. PATENT NO. 7,178,097
FOR USING THE CLAIMED SYSTEM**

107. The allegations set forth in the foregoing paragraphs 1 through 106 are hereby re-alleged and incorporated by reference.

108. In violation of 35 U.S.C. §271(b), Microsoft has induced, and still is inducing, the infringement of the '097 Patent in this District and elsewhere by actively encouraging its corporate users to use the Microsoft Reference Preservation System in an infringing manner through marketing, promoting, soliciting, importing, offering for sale, selling and distributing the Microsoft Reference Preservation System, that when used as intended and directed by Microsoft, infringes at least Claims 1 and 18 of the '097 Patent, either literally or under the doctrine of equivalents.

109. Microsoft's advertising and instructions, which are available on the Microsoft web site, instruct and actively encourage Microsoft corporate users to use the Microsoft Reference Preservation System to directly infringe at least Claims 1 and 18 of the '097 Patent. *See, e.g.*, <https://www.onenote.com/clipper> (last visited November 7, 2016) (advertising that with OneNote Web Clipper, users can “[q]uickly capture any webpage to OneNote, where [they] can easily edit, annotate, or share it”); *See also, e.g.*, <https://support.office.com/en-us/article/Getting-Started-with-the-OneNote-Web-Clipper-5696609d-c5ae-4591-b3af-1f897cb6eda6> (instructing users how to install and use OneNote Web Clipper in conjunction with OneNote and use Web Clipper to “easily capture, edit, annotate, and share information.)

110. Upon information and belief, Microsoft provides training and training materials that instruct and actively encourage Microsoft corporate users on how to use the Microsoft Reference Preservation System to directly infringe at least Claims 1 and 18 of the '097 Patent.

111. Upon information and belief, at least in certain instances, Microsoft provides training and training material to its corporate customers through its “FastTrack” program. *See, e.g.*, <http://fasttrack.microsoft.com/fasttrack-faq> (last visited November 11, 2016) (details the services provided by Microsoft FastTrack).

112. Upon information and belief, Microsoft customer service agents instruct and actively encourage Microsoft corporate users on how to use the Microsoft Reference Preservation System to infringe at least Claims 1 and 18 of the '097 Patent.

113. Corporate users of the Microsoft Reference Preservation System use the Microsoft Reference Preservation System to infringe at least Claims 1 and 18 of the '097 Patent by putting the claimed invention into service, *i.e.*, controlling the Microsoft Reference Preservation System as a whole and obtaining a benefit from it.

114. Corporate users of the Microsoft Reference Preservation System put into service a Microsoft database that is connected to the Internet.

115. Corporate users of the Microsoft Reference Preservation System use a first communications device (e.g., a first corporate computer) which is connected to the world wide web and adapted to adapted for use by the Microsoft corporate user to author a transcript and transmit the address of a web site that is referenced in the transcript to the Microsoft database.

116. Corporate users of the Microsoft Reference Preservation out into service a Microsoft database which is adapted for use to store a verbatim copy of a website (as it existed when an address to the website is transmitted to the database by the Microsoft corporate user (who is the author of the manuscript) along with an associated, distinctive key that identifies the verbatim copy.

117. Corporate users of the Microsoft Reference Preservation System use a second communications device (e.g., a second Microsoft corporate user computer) which is connected to the Internet and is adapted for use by a Microsoft corporate user (who is the audience for the manuscript) to transmit the associated, distinctive key that identifies the verbatim copy of the website.

118. Corporate users of the Microsoft Reference Preservation out into service a Microsoft database which is connected to the Internet and adapted for use to transmit the stored, verbatim copy of the website in response to receiving the associated, distinctive key that identifies the verbatim copy.

119. Under 35 U.S.C. §271(a), Microsoft corporate users of the Microsoft Reference Preservation System cause the Microsoft Reference Preservation System as a whole to perform the step of obtaining a copy of the web site from the Internet or web upon receiving the web site

address from the corporate users such that and transmitting or transferring the verbatim copy of the stored copy of the web site and obtaining a benefit from the result.

120. Microsoft's infringement has injured or will continue to injure Talsk and Talsk is entitled to recover damages adequate to compensate it for Microsoft's infringement, which in no event can be less than a reasonable royalty.

121. Talsk is entitled to damages in accordance with 35 U.S.C. §§ 271, 281, 284, and 287.

JURY DEMAND

Plaintiff Talsk Research, Inc. hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff Talsk Research, Inc. respectfully requests that the Court find in its favor and against Defendant Microsoft Corporation, and that the Court grant Plaintiff the following relief:

- A. an adjudication that Defendant has infringed the '097 Patent;
- B. a finding that Defendant's infringement has been willful;
- C. an award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement of the '097 Patent, and any continuing or future infringement through the date such judgment is entered, including prejudgment and post-judgment interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;
- D. an award of treble damages;

- E. a finding that this case is “exceptional” under 35 U.S.C. § 285 and awarding Plaintiff its expenses and attorneys’ fees incurred in bringing and prosecuting this action; and,
- F. an award to Plaintiff of such further relief at law or in equity as the Court deems just and proper, including, but not limited to costs, fees, expenses, and/or interest.

Dated: November 11, 2016

Respectfully submitted,

/s/ William C. Spence

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