

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SIMIO, LLC,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 16-cv-
	)	
	)	
FLEXSIM SOFTWARE PRODUCTS, INC.,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**COMPLAINT FOR PATENT INFRINGEMENT  
AND UNFAIR COMPETITION**

Simio, LLC (“Simio LLC” or “Plaintiff”), , by its undersigned counsel, respectfully sets forth its Complaint against Defendant FlexSim Software Products, Inc. (“FlexSim Software Products, Inc.” or “Defendant”) stating as follows:

**THE PARTIES**

1. Plaintiff Simio, LLC (“Defendant”) is a Pennsylvania limited liability company with a place of business at 504 Beaver Street, Sewickley, Pennsylvania 15143. Plaintiff’s business consists primarily of the creating, marketing and selling simulation software and providing simulation modeling services.

2. Defendant FlexSim Software Product, Inc. (“Plaintiff”) is a Utah corporation with its headquarters in Orem, Utah.

**JURISDICTION AND VENUE**

3. This Complaint alleges patent infringement under 35 U.S.C. § 271.

4. This Court has subject matter jurisdiction for patent claims pursuant to 28 U.S.C. §§ 1331 and 1338.

5. The Court has personal jurisdiction over Defendant because Defendant has established minimum contacts with this forum by purposely availing itself of the laws and benefits of the forum, and the exercise of jurisdiction over the Defendant would not offend traditional notions of fair play and substantial justice. On information and belief, Defendant has voluntarily conducted business in this judicial district.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (b) and (c) and/or 1400, because Defendant is subject to personal jurisdiction in this judicial district.

#### **FACTUAL ALLEGATIONS**

7. Simio is the owner of United States Patent No. 8,156,468 B22 (the “’468 Patent”), entitled System and Method for Creating Intelligent Simulation Objects Using Graphical Process Descriptions, and issued on April 10, 2012. A true and correct copy of the ’468 Patent is attached hereto as Exhibit “A.”

8. The ’468 Patent relates generally to an object-oriented, computer-based system for developing simulation models. The system comprises one or more base objects and one or more graphical processes, wherein new objects are created from base objects by a user assigning one or more graphical processes to the base object(s). New objects are created without the need for methods or computer programming. A model is built by creating objects that represent the physical components of the system being modeled into the model, and then running the model.

9. Independent Claim 1 of the ’468 Patent is addressed to a computer-based system for developing simulation models on a physical computing device, and Claims 2-13 depend directly or indirectly upon Claim 1.

10. Defendant FlexSim is currently making, offering for sale and/or selling in the United States simulation software known as FlexSim 2016, and will continue to do so unless enjoined by this Court.

11. FlexSim launched FlexSim 2016 as a product and service that described as “Next generation simulation modeling with Process Flow.” See <https://www.FlexSim.com/next-generation-simulation-modeling-process-flow/> (attachment B hereto).

12. Defendant FlexSim was on notice of a patent infringement allegation by Simio in respect to the '468 Patent as early as July 8, 2016, when legal counsel for Simio notified William Nordgren, CEO of FlexSim, of the '468 Patent.

13. Much earlier, Mr. Nordgren attended the 2011 Winter Simulation Conference, at which Dennis Pegden of Simio presented on its patented system and method and, as shown in one of the powerpoint slides from the Simio Tutorial at the conference, specifically noted that the system and method was subject to a then pending U.S. patent application, which later resulted in the '468 Patent.

14. Defendant FlexSim responded to the July 8, 2016 notice by filing a complaint for declaratory judgment of non-infringement, invalidity and unenforceability in the United States District Court of Utah on July 18, 2016. Despite the May 13, 2016 notice, Defendant FlexSim has continued to make FlexSim 2016 available for use in the United States and also has continued to offer FlexSim 2016 for sale and importation into the United States.

## **COUNT I**

### **INFRINGEMENT OF THE '468 PATENT**

15. The preceding paragraphs of the Complaint are hereby incorporated by reference as though the same were fully set forth herein.

16. Upon information and belief, Defendant's making, offer for sale and/or sale of FlexSim 2016 constitutes direct infringement of at least system claims 1, 2, 3, 6, 8, and 9 of the '468 Patent, literally or under the doctrine of equivalents, and violates 35 U.S.C. §271(a).

17. More specifically, and upon information and belief, FlexSim 2016 includes the elements of Claim 1 of the '468 Patent (or equivalents thereto).

18. Upon information and belief, Defendant's making, offer for sale and/or sale of FlexSim 2016, with instructions to use the claimed system in at least claims 1, 2, 3, 6, 8, and 9 of the '468 Patent induces infringement of the '468 Patent under 35 U.S.C. §271(b).

19. When Defendant FlexSim has made and sold FlexSim 2016 and/or offered it for sale, FlexSim was and is aware of the '468 Patent and has known that use of FlexSim 2016 by users in the United States has and will constitute direct infringement of the '468 Patent.

20. Upon information and belief, Defendant's making, offer for sale and/or sale of FlexSim 2016 , with instructions to use the claimed system in at least claims 1, 2, 3, 6, 8, and 9 of the '468 Patent are acts of contributory infringement of the '468 Patent under 35 U.S.C. §271(c).

21. Defendant FlexSim has provided and sold FlexSim 2016 and/or offered it for sale to users in the United States intending that FlexSim 2016 would be used in the United States. Defendant FlexSim also has known that that use of FlexSim 2016 by users in the United States has and will constitute direct infringement of the '468 Patent.

22. By reason of the foregoing, Plaintiffs have been damaged and will continue to be damaged in an amount yet to be determined, and has suffered and will continue to suffer irreparable loss and harm.

23. The activities of Defendant FlexSim complained of herein constitute willful and intentional infringement of the '468 Patent, are in total disregard of the rights of Simio, and were commenced and have continued in spite of FlexSim's knowledge that the manufacture, use, sale, and offer for sale of FlexSim 2016 were and are in the direct contravention of the rights of Simio.

24. This action, therefore is "exceptional" within the meaning of 35 U.S.C. § 285.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that this court grant it equitable and other relief, and enter judgment that:

- a. Defendant is preliminarily and permanently enjoined from directly infringing the '468 Patent pursuant to 35 U.S.C. § 283, by sale and use of FlexSim 2016 or any similar device;
- b. Defendant is liable to Plaintiff for its direct, induced and contributory infringement and ordered to pay damages pursuant to 35 U.S.C. § 284 as a result of infringement of Plaintiff's '468 Patent, and all damages suffered by Plaintiff as a result of the infringement;
- c. This case is exceptional under 35 U.S.C. § 285;
- d. Plaintiff is entitled to a full accounting for and an award of damages for Defendant's infringement of the '4687 Patent, including pre- and post-judgment interest;
- e. Plaintiff is awarded its attorneys' fees, expenses and costs pursuant to 35 U.S.C. § 284; and

f. Plaintiff is awarded such further relief as the court may deem appropriate.

**A JURY TRIAL IS DEMANDED**

Date: November 14, 2016

Respectfully submitted,

MEYER, UNKOVIC & SCOTT LLP

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