

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

MICOBA LLC

Plaintiff,

v.

**ASUSTEK COMPUTER INC.,
ASUS COMPUTER INTERNATIONAL
and ASUS CLOUD CORPORATION,**

Defendants.

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CIVIL ACTION NO.

JURY TRIAL DEMANDED

COMPLAINT FOR INFRINGEMENT OF PATENT

COMES NOW, Plaintiff Micoba LLC (“Micoba” or Plaintiff), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent and enjoin defendants ASUSTeK Computer Inc., ASUS Computer International and ASUS Cloud Corporation (hereinafter “Defendants”) from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or of the consent from Micoba, from U.S. Patent No. 8,473,532 (the “532 patent”, attached hereto as Exhibit “A”) pursuant to 35 U.S.C. § 271, and to recover damages, attorney’s fees, and costs.

THE PARTIES

2. Plaintiff Micoba is a Texas entity with its principal place of business at 815 Brazos St., Suite 500 Austin, TX 78701.

3. Upon information and belief, defendant ASUSTeK Computer Inc. is a corporation organized and existing under the laws of Taiwan, with a principal place of business at 4F, NO.

150, Li-Te Rd., Pei Tou Taipei, Taiwan. Upon information and belief, Defendant may be served with process at Legal Affairs Center, 15, Li-Te Rd., Taipei 112, Taiwan.

4. Upon information and belief, defendant ASUS Computer International is a subsidiary of ASUSTeK Computer Inc., organized and existing under the laws of the state of California, having a principal place of business at 800 Corporate Way Fremont, CA 94539-6106. Upon information and belief, Defendant may be served with process at CT Corporation System, 1999 Bryan St., Ste. 900 Dallas, TX 75201.

5. Upon information and belief, defendant ASUS Cloud Corporation is a subsidiary of ASUSTeK Computer Inc., organized and existing under the laws of Taiwan, with a principal place of business at 4F, NO. 150, Li-Te Rd., Pei Tou Taipei, Taiwan. Upon information and belief, Defendant may be served with process at Legal Affairs Center, 15, Li-Te Rd., Taipei 112, Taiwan.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

7. This Court has personal jurisdiction over Defendants by virtue of their systematic and continuous contacts with this jurisdiction, as evidenced for example by ASUS Computer International's right to transact business in Texas and active Texas SOS file number, as well as because of the injury to Micoba, and the cause of action Micoba has risen, as alleged herein.

8. Defendants are subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving

substantial revenue from goods and services provided to individuals in Texas and in this judicial district. For example, the accused instrumentality, as described below, is available for use through Defendants' website in this District.¹ Upon information and belief, Defendants have engaged in substantial and not isolated activity within this District. Therefore, exercise of jurisdiction over Defendants will not offend traditional notions of fair play and substantial justice. Such an exercise is consistent with the Texas long-arm statute.

9. Defendants have conducted and do conduct business within the state of Texas, including the geographic region within the Eastern District of Texas, directly or through intermediaries, resellers or agents, or offers and advertises (including through the use of interactive web pages with promotional material) products or services, or uses services or products in Texas, including this judicial district, that infringe the '532 patent.

10. In addition, the causes of action against Defendants are connected (but not limited) to Defendants' purposeful acts committed in the state of Texas, including the geographic region within the Eastern District of Texas, including Defendants' use of products or services that fall within the scope of at least one claim of the '532 patent.

JOINDER

11. Defendants are properly joined under 35 U.S.C. § 299(a)(1) because a right to relief is asserted against the parties jointly, severally, and in the alternative with respect to the same transactions, occurrences, or series of transactions or occurrences relating to using, the same accused products, as defined below. Specifically, as alleged in detail below, Defendants are alleged to infringe the '532 patent with respect to the same product.

¹ <https://www.asuswebstorage.com/navigate/>

12. Defendants are properly joined under 35 U.S.C. § 299(a)(2). Questions of fact will arise that are common to all Defendants, including for example, whether Defendants' products and/or services have features that meet the features of one or more claims of the '532 patent, and what reasonable royalty will be adequate to compensate the owner of the '532 patent for their infringement.

13. Defendants use products and /or offer services that infringe on the '532 patent.

14. At least one right to relief is asserted against these parties jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to using the same accused product and/or process.

15. Venue lies in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

FACTUAL ALLEGATIONS

16. On June 25, 2013, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '532 patent, entitled "Method and apparatus for automatic organization for computer files" after a full and fair examination. (Exhibit A).

17. Micoba is presently the owner of the patent, having received all right, title and interest in and to the '532 patent from the previous assignee of record. Micoba possesses all rights of recovery under the '532 patent, including the exclusive right to recover for past infringement.

18. The '532 patent contains five (5) independent claims and twenty (20) dependent claims. Defendants commercializes, *inter alia*, products or services that include each and every element of at least one claim of the '532 patent.

19. The invention claimed in the '532 patent comprises a system for automatically organizing computer files into folders.

DEFENDANTS' PRODUCTS

20. Defendants' products, such as the "Asus WebStorage" ("Accused Instrumentality"), include a computer system comprising a processor, memory, and software (e.g., Asus WebStorage cloud/server and associated software) for automatically organizing computer files into folders, said software causing said computer system to execute the series of steps recited in claim 13 and as further explained below (e.g., files added into the WebStorage interface are automatically organized into corresponding folders on the WebStorage server).²

21. As required by claim 13 of the '532 patent, the Accused Instrumentality provides a directory of folders wherein each of said folders is represented by a description. For example, the WebStorage server contains and/or is capable of receiving a directory of folders with corresponding file and directory paths.

22. As required by claim 13 of the '532 patent, the Accused Instrumentality provides a new computer file not having a location in said directory, said computer file being represented by a description. For example, a new file uploaded into the WebStorage interface that is not yet stored on the WebStorage server will have a file and directory path corresponding to where the file was initially stored, rather than having a location in said directory.

23. As required by claim 13 of the '532 patent, the Accused Instrumentality compares said description of said computer file to descriptions of a plurality of said folders along a single path from a root folder to a leaf folder. For example, the file description (e.g., the file path) of the newly uploaded file will be compared with file descriptions of those folders already stored in the WebStorage server. Furthermore, the Accused Instrumentality compares file paths from root folder to leaf folder before placing a newly uploaded file into the folder that is most similar to the newly uploaded file.

² <https://www.asuswebstorage.com/navigate/features/>

24. As required by claim 13 of the '532 patent, the Accused Instrumentality assigns said computer file to a folder having the most similar description. For example, the newly uploaded file will be placed into a folder on the WebStorage server that has a directory path most similar to that of the uploaded file.

25. The elements described in paragraphs 20-24 are covered by at least claim 13 of the '532 patent. Thus, Defendants' use of the Accused Instrumentality is enabled by the system described in the '532 patent.

INFRINGEMENT OF THE '532 PATENT

26. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1 to 25.

27. In violation of 35 U.S.C. § 271, Defendants are now, and have been directly infringing the '532 patent.

28. Defendants have had knowledge of infringement of the '532 patent at least as of the service of the present complaint.

29. Defendants have directly infringed and continue to directly infringe at least claim 13 of the '532 patent by using, at least during testing, the Accused Instrumentality without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendants' direct infringement of the '532 patent, Plaintiff has been and continues to be damaged.

30. Defendants have indirectly infringed and continue to indirectly infringe at least claim 13 of the '532 patent by actively inducing its end-users, to directly infringe by using the Accused Instrumentality. Defendants engaged in such inducement having knowledge of the '532 patent, at least as of the service of the present complaint. Furthermore, Defendants knew or should

have known that its action would induce direct infringement by others and intended that its actions would induce direct infringement by others. Defendants offer the Accused Instrumentality in Texas via its website specifically intending that its customers use it. For example, Defendants' website provides instructions on how to use and/or install the Accused Instrumentality.³ As a direct and proximate result of Defendants' indirect infringement by inducement of the '532 patent, Plaintiff has been and continues to be damaged.

31. By engaging in the conduct described herein, Defendants have injured Micoba and are thus liable for infringement of the '532 patent, pursuant to 35 U.S.C. § 271.

32. Defendants have committed these acts of infringement without license or authorization.

33. As a result of Defendants' infringement of the '532 patent, Micoba has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendants' past infringement, together with interests and costs.

34. Micoba will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court. As such, Micoba is entitled to compensation for any continuing and/or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement.

DEMAND FOR JURY TRIAL

35. Micoba demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Micoba prays for the following relief:

³ *Id.*

- a. That Defendants be adjudged to have infringed the '532 patent directly and/or indirectly by way of inducement, either literally or under the doctrine of equivalents;
- b. That Defendants, their officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the '532 patent;
- c. An award of damages pursuant to 35 U.S.C. § 284 sufficient to compensate Micoba for the Defendants' past infringement and any continuing or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement, including compensatory damages;
- d. An assessment of pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;
- e. That Defendants be directed to pay enhanced damages, including Micoba's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and
- f. That Micoba have such other and further relief as this Court may deem just and proper.

Dated: December 9, 2016

Respectfully Submitted,

By: /s/Eugenio J. Torres-Oyola

Eugenio J. Torres-Oyola

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