

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

**LISTOU SEARCH TECHNOLOGIES  
LLC,**

**Plaintiff,**

**v.**

**THE MEN'S WEAREHOUSE, INC.,**

**Defendant.**

**No. 5:16-cv-144-RWS**

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Listou Search Technologies LLC files its First Amended Complaint for Patent Infringement and alleges based on knowledge as to itself and information and belief as to the Defendant as follows:

**THE PARTIES**

1. Plaintiff Listou Search Technologies LLC is a Texas limited liability company with a principal office at 815 Brazos Street, Suite 500, Austin, Texas 78701.

2. Defendant The Men's Wearhouse, Inc., is a Texas corporation with a principal office at 6380 Rogerdale Road, Houston, Texas 77072. Defendant may be served with process via Corporation Service Company dba CSC – Lawyers Inco., 211 E. 7th Street, Suite 620, Austin, Texas 78701.

**JURISDICTION AND VENUE**

3. This action arises under the Patent Act, 35 U.S.C. § 1 *et seq.*
4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 1331 and 1338.
5. Upon information and belief, this Court has personal jurisdiction over Defendant because (i) Defendant conducts business in this Judicial District, directly or through intermediaries; (ii) at least a portion of the alleged infringements occurred in this Judicial

District; and (iii) Defendant regularly solicits business, engages in other persistent courses of conduct, or derives revenue from goods and services provided to individuals in this Judicial District.

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

### **THE PATENT-IN-SUIT**

7. On April 10, 2001, the U.S. Patent and Trademark Office issued U.S. Patent No. 6,216,139 (the “139 patent”), entitled “Integrated Dialog Box For Rapidly Altering Presentation of Parametric Text Data Objects On A Computer Display.” A true and correct copy of the 139 patent is attached at Exhibit A.

8. The 139 patent is presumed valid under 35 U.S.C. § 282(a).

9. Plaintiff is the owner and assignee of all substantial rights, title, and interest in and to the 139 patent.

### **PROCEDURAL HISTORY**

10. The 139 patent was the subject of multiple patent infringement actions in the District of Delaware.

11. Defendants in the District of Delaware actions filed multiple motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing that the 139 patent claims ineligible subject matter under 35 U.S.C. § 101.

12. After extensive briefing from the parties, Magistrate Judge Burke recommended, in a forty-one-page Report and Recommendation, the denial of all motions to dismiss because the 139 patent does not claim an abstract idea. Judge Burke further recommended that (i) Claim 1 as the undisputed representative claim recites an inventive concept, (ii) Claim 1 recites limitations that provide for an improved query dialog box that cannot be performed by pen and paper alone, (iii) Claim 1 does not recite conventional or generic limitations that a computer simply automates, (iv) the query dialog box is not extra-solution activity, and (v) Claim 1 does not preempt an abstract idea. Attached at Exhibit B is a true and correct copy of Magistrate

Judge Burke's July 15, 2015, Report and Recommendation in 1:14-cv-240-LPS (D. Del.) (Dkt. No. 26) (filed at Dkt. No. 24 in LEAD CASE 1:14-cv-233-LPS).

13. District Judge Stark agreed that the motions should be dismissed, but without prejudice to refiling later as summary judgment motions because claim construction and further discovery on the factual issues related to the inventive concept of the claimed invention were needed before the court could decide if the 139 patent is patent-eligible. This discovery included the fact issues of preemption and patentability and if the claims solve a technological problem. Attached at Exhibit C is a true and correct copy of Judge Stark's September 30, 2015, Memorandum Order in 1:14-cv-233-LPS (D. Del.) (Dkt. No. 27).

### **THE ACCUSED PRODUCTS**

14. Defendant makes, uses, sells, offers for sale, or imports a product that infringes one or more claims of the 139 patent.

15. Defendant's Accused Product is its website: <http://www.menswearhouse.com>.

### **COUNT I**

#### **DIRECT INFRINGEMENT OF U.S. PATENT NO. 6,216,139**

16. Plaintiff incorporates by reference herein each of its foregoing facts and allegations.

17. Plaintiff conducted a pre-filing investigation, comparing the Accused Product to one or more claims of the 139 patent.

18. Based on Plaintiff's pre-filing investigation, without license or authorization and in violation of 35 U.S.C. § 271(a), Defendant directly infringes one or more claims of the 139 patent in this District and throughout the United States, literally or under the doctrine of equivalents, through its use of the Accused Product by its customer service representatives and its testing of current and updated versions of the Accused Product before releasing it for use by the public.

19. Defendant directly infringes at least Claim 1 of the 139 patent, which is representative of the claims that Defendant infringes, in violation of 35 U.S.C. § 271(a) by,

among other things, testing and using within this District and the United States its Accused Product, which under Claim 1 of the 139 patent provides a method for using a computer system (e.g., *Defendant's Accused Product is hosted on one or more of Defendant's server system computers in a computer system environment*) to sort and display text data objects (e.g., *product items such as SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS, SHOES, and ACCESSORIES that Defendant sells on its accused website*), comprising the steps of:

a. imaging (e.g., *Defendant and Defendant's Accused Product images*), on a display device (e.g., *a computer, tablet, or smartphone screen*) controlled by the computer system (e.g., *Defendant's server computer systems*), a query dialog box (e.g., *the DRESS SHIRTS web page on Defendant's accused website providing a listing of searchable dress shirts*),

wherein the query dialog box (e.g., *the DRESS SHIRTS web page*) displays each of a plurality of parameters (e.g., *TYPE, FIT, SIZE, PRICE*) associated with each of the text data objects (e.g., *DRESS SHIRTS*), forms a plurality of spaces for listing values associated with each displayed parameter (e.g., *the TYPE, FIT, SIZE, and PRICE parameters each provide drop-down boxes that provide spaces that list values associated with each displayed parameter; e.g., the TYPE drop-down box lists Button-Up Shirts, Dress Shirts, and Tuxedo Shirts as values*), and further forms a space for selecting a sort order (e.g., *a space is provided on Defendant's accused website for a SORT BY function that selects a sort order for DRESS SHIRTS*);

b. designating, for each displayed parameter, a parameter value (e.g., *Defendant pre-chooses the parameter values, e.g., price ranges, for SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS, SHOES, and ACCESSORIES*);

c. constructing a sort order from the displayed parameters in the space for selecting a sort order (e.g., *Defendant and Defendant's Accused Product provides the SORT BY function for constructing a sort order of SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS,*

*SHOES, and ACCESSORIES according to displayed parameters TYPE, FIT, SIZE, PRICE);*

d. selecting, using the computer system, text data objects satisfying the designated values (*e.g., Defendant through Defendant's Accused Product selects SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS, SHOES, and ACCESSORIES that satisfy the designated parameter values, e.g., TYPE, FIT, SIZE, and PRICE*); and

e. sorting, using the computer system, the selected text data objects according to the constructed sort order (*e.g., Defendant through Defendant's Accused Product sorts the selected SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS, SHOES, and ACCESSORIES using the SORT BY function according to BUYER'S PICKS, NEW ARRIVALS, RATING, PRICE, and BEST SELLERS*).

20. Claim 1 is understandable to a person of ordinary skill in the art who has the requisite education, training, and experience with the technology at issue in this case.

21. A person of ordinary skill in the art understands Plaintiff's theory of how Defendant directly infringes at least Claim 1 of the 139 patent through its testing and use of the Accused Product upon a plain reading of this Complaint, the 139 patent, and at least Claim 1 as the representative claim.

22. Since at least the date that Defendant was served with a copy of Plaintiff's Original Complaint for Patent Infringement, Defendant has known that it is directly infringing one or more claims of the 139 patent through its testing and use of the Accused Product.

23. Plaintiff reserves the right to modify its direct infringement theory as discovery progresses in this case, and it shall not be estopped for claim construction purposes by its preliminary infringement analysis as provided in its Original and First Amended Complaints.

24. Plaintiff's preliminary infringement analysis is not representative of its final claim construction positions.

**COUNT II**  
**INDUCED INFRINGEMENT OF U.S. PATENT NO. 6,216,139**

25. Plaintiff incorporates by reference each of its foregoing allegations.

26. Without license or authorization and in violation of 35 U.S.C. § 271(b),

Defendant is inducing direct infringement of one or more claims of the 139 patent in this District and throughout the United States by providing its customers with instructions that explain how to use the Accused Product and directly infringe at least Claim 1 by providing a method for using a computer system (*e.g., Defendant's Accused Product hosted on one or more of Defendant's server system computers in a computer system environment*) to sort and display text data objects (*e.g., product items such as SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS, SHOES, and ACCESSORIES that Defendant sells on its accused website*), comprising the steps of:

a. imaging, on a display device (*e.g., imaging on a customer's computer, tablet, or smartphone screen*) controlled by the computer system (*e.g., Defendant's server computer systems*), a query dialog box (*e.g., the DRESS SHIRTS web page on Defendant's accused website providing a listing of searchable dress shirts*),

wherein the query dialog box (*e.g., the DRESS SHIRTS web page*) displays each of a plurality of parameters (*e.g., TYPE, FIT, SIZE, PRICE*) associated with each of the text data objects (*e.g., DRESS SHIRTS*), forms a plurality of spaces for listing values associated with each displayed parameter (*e.g., the TYPE, FIT, SIZE, and PRICE parameters each provide drop-down boxes that provide spaces that list values associated with each displayed parameter; e.g., the TYPE drop-down box lists Button-Up Shirts, Dress Shirts, and Tuxedo Shirts as values*), and further forms a space for selecting a sort order (*e.g., a space is provided for a SORT BY function that selects a sort order for DRESS SHIRTS*);

b. designating, for each displayed parameter, a parameter value (*e.g., Defendant's Accused Product allows customers to choose price ranges for SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS, SHOES, and ACCESSORIES*);

c. constructing a sort order from the displayed parameters in the space for selecting a sort order (*e.g., Defendant's Accused Product provides the SORT BY function that allows customers to construct a sort order of SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS, SHOES, and ACCESSORIES according to displayed parameters TYPE, FIT, SIZE, PRICE*);

d. selecting, using the computer system, text data objects satisfying the designated values (*e.g., Defendant's Accused Product allows customers to select SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS, SHOES, and ACCESSORIES that satisfy their designated parameter values, e.g., TYPE, FIT, SIZE, and PRICE*); and

e. sorting, using the computer system, the selected text data objects according to the constructed sort order (*e.g., Defendant's Accused Product allows customers to sort their selected SUITS, BLAZERS & SPORT COATS, DRESS SHIRTS, SHOES, and ACCESSORIES using the SORT BY function according to BUYER'S PICKS, NEW ARRIVALS, RATING, PRICE, and BEST SELLERS*).

27. Since at least the date that Defendant was served with a copy of Plaintiff's First Amended Complaint for Patent Infringement, Defendant has known of the 139 patent and along with providing instructions on how to use the Accused Product, it has known that it is inducing direct infringement of at least Claim 1 of the 139 patent by its customers.

28. If Defendant does not know that it has been inducing direct infringement by its customers through their use of Defendant's instructions on how to use the Accused Product since being served with Plaintiff's First Amended Complaint for Patent Infringement, Defendant has taken deliberate actions to remain willfully blind and avoid learning about its inducing direct infringement.

29. Since at least the date that Defendant was served with a copy of Plaintiff's First Amended Complaint, Defendant has specifically intended to induce direct infringement of the 139 patent by providing instructions to its customers on how to use the Accused Product to directly infringe the 139 patent based on its knowledge of the 139 patent and at least Claim 1.

30. A person of ordinary skill in the art understands Plaintiff's theory of how Defendant is inducing its customers to directly infringe at least Claim 1 upon a plain reading of this First Amended Complaint, the 139 patent, and at least Claim 1 as the representative claim.

31. Plaintiff reserves the right to modify its induced infringement theory as discovery progresses in this case, and it shall not be estopped for claim construction purposes by its preliminary infringement analysis as provided in this First Amended Complaint.

32. Plaintiff's preliminary infringement analysis is not representative of its final claim construction positions.

### **PRAYER FOR RELIEF**

Plaintiff requests the following relief:

A. Judgment that Defendant has infringed the 139 patent under 35 U.S.C. §§ 271(a) and (b);

B. An accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. An award of damages under 35 U.S.C. § 284 adequate to compensate Plaintiff for Defendant's past and future infringement, including any infringement from the date of filing of this Complaint through the date of judgment, together with interest and costs;

D. Judgment that this case is exceptional under 35 U.S.C. § 285 and an award of Plaintiff's reasonable attorneys' fees and costs; and

E. Such further relief at law or in equity that this Court deems just and proper.

### **JURY TRIAL DEMAND**

Plaintiff demands a trial by jury on all claims and issues so triable.



Dated: January 3, 2017

Respectfully submitted,



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*Counsel for Plaintiff*  
*Listou Search Technologies LLC*

**CERTIFICATE OF SERVICE**

The undersigned certifies that all counsel of record whom have consented to electronic service were served with a copy of this document under this Court's CM/ECF system and local rules on January 3, 2017.

A handwritten signature in blue ink, appearing to read 'Peter J. Corcoran, III', is positioned above a horizontal line.

Peter J. Corcoran, III