

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TMI SOLUTIONS LLC,

Plaintiff,

v.

THE GAP, INC.,

Defendant.

Case No. 17-cv-966-LPS-CJB

PATENT CASE

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff TMI Solutions LLC (“Plaintiff”) filed this First Amended Complaint against The Gap, Inc. (“Defendant”) for infringement of U.S. Patent No. 9,484,077 (“the ’077 patent”) and U.S. Patent No. 9,484,078 (“the ’078 patent”) (collectively “the patents-in-suit” or “asserted patents”).

THE PARTIES

1. Plaintiff is a Michigan limited liability company with its principal place of business located at 836 Diamond Street, Laguna Beach, California 92651.

2. Defendant is a Delaware corporation with its principal place of business located at Two Folsom Street, San Francisco, California 94105.

JURISDICTION AND VENUE

3. Plaintiff brings this action for patent infringement under the patent laws of the United States, namely 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant is incorporated to do business in the state of Delaware.

5. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process, due at least to its substantial business in this State and judicial district, including: (A) committing acts of infringement in this judicial district as described herein; (B) is legally housed and/or incorporated in this judicial district; and (C) regularly conducting or soliciting business, engaging in other persistent conduct, and/or deriving substantial revenue from goods and products sold and services provided to Delaware residents.

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 9,484,077)

6. Plaintiff incorporates paragraphs 1 through 5 herein by reference.

7. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

8. Plaintiff is the owner of the '077 patent, entitled "Providing Services from a Remote Computer System to a User Station over a Computer Network" with all substantial rights to the '077 patent including the right to enforce, sue, and recover damages for past infringement. A copy of the '077 patent is attached as Exhibit 1.

9. The '077 patent is valid, enforceable and was duly issued in fully compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

10. Defendant has infringed one or more claims of the '077 patent in this judicial district and elsewhere in Delaware and the United States.

11. In particular, Defendant has infringed at least claim 6 of the '077 patent by, among other things, practicing and/or using hardware that practices the computer implemented method as set forth in claim 6 via Defendant's use of cookies in conjunction with its website. Evidence of Defendant's infringement is set forth in the claim chart attached hereto as Exhibit 2.

12. Defendant is liable for these infringements of the '077 patent pursuant to 35 U.S.C. § 271.

13. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

COUNT II
(INFRINGEMENT OF U.S. PATENT NO. 9,484,078)

14. Plaintiff incorporates paragraphs 1 through 13 herein by reference.

15. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

16. Plaintiff is the owner of the '078 patent, entitled "Providing Services from a Remote Computer System to a User Station over a Computer Network" with all substantial rights to the '078 patent including the right to enforce, sue, and recover damages for past infringement. A copy of the '078 patent is attached as Exhibit 3.

17. The '078 patent is valid, enforceable and was duly issued in fully compliance with Title 35 of the United States Code.

DIRECT INFRINGEMENT (35 U.S.C. § 271(a))

18. Defendant has directly infringed one or more claims of the '078 patent in this judicial district and elsewhere in Delaware and the United States.

19. In particular, Defendant has infringed at least claims 1 and 2 of the '078 patent by, among other things, practicing and/or using hardware that practices the computer implemented method as set forth in claims 1 and 2 via Defendant's use of cookies in conjunction with its website. Evidence of Defendant's infringement is set forth in the claim chart attached hereto as Exhibit 4.

20. Defendant is liable for these infringements of the '078 patent pursuant to 35 U.S.C. § 271.

21. Plaintiff has been damaged as a result of Defendant's infringing conduct described in this Count. Defendant is, thus, liable to Plaintiff in an amount that adequately compensates Plaintiff for Defendant's infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

JURY DEMAND

Plaintiff requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

PRAYER FOR RELIEF

Plaintiff asks that the Court find in its favor and against Defendant and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of the '077 patent and/or the '078 patent have been infringed, either literally and/or under the doctrine of equivalents by Defendant;
- b. Judgment that Defendant account for and pay to Plaintiff all damages and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;
- c. Judgment that Defendant account for and pay to Plaintiff a reasonable royalty because of Defendant's infringing activities;
- d. That Plaintiff be granted pre-judgment and post judgment interest on the damages caused by Defendant's infringing activities and other conduct complained of herein; and
- e. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

DATED: September 12, 2017

TMI SOLUTIONS LLC

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***COUNSEL FOR PLAINTIFF
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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2017, I caused the foregoing document to be served on counsel of record via the Court's CM/ECF system.

/s/ Timothy Devlin
Timothy Devlin