

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

FLASH3D LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

CASE NO. 2:17-cv-649

PATENT CASE

JURY TRIAL DEMANDED

**ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT
AGAINST MICROSOFT CORPORATION**

Plaintiff Flash3D LLC files this Original Complaint for Patent Infringement against Microsoft Corporation, pursuant to Rule 15(a)(1)(B), Fed.R.Civ.P., and would respectfully show the Court as follows:

I. THE PARTIES

1. Plaintiff Flash3D LLC (“Flash3D” or “Plaintiff”) is a Texas limited liability company with its principal place of business in the Eastern District of Texas at 5068 W. Plano Pkwy, Suite 300, Plano, Texas 75093.

2. On information and belief, defendant Microsoft Corporation (“Defendant”), is a Delaware corporation, with a regular and established place of business at 2601 Preston Road #1176, Frisco, TX 75034, which is within the Eastern District of Texas. Defendant is registered for the right to transact business in Texas and has a registered agent in Texas, Corporation Service Company, 211 E. 7th Street, Suite 620 Austin, Texas 78701.

II. JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction of such action under 28 U.S.C. §§ 1331 and 1338(a).

4. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction, pursuant to due process and the Texas Long Arm Statute, due at least to its substantial business in this forum, including at least a portion of the infringement alleged herein.

5. On information and belief, within this state, Defendant has used, sold, and/or offered for sale the patented inventions thereby committing, and continuing to commit, acts of patent infringement alleged herein. In addition, on information and belief, Defendant has derived revenues from its infringing acts occurring within the State of Texas and this District, including due at least to its sale of products and/or services within the State of Texas and this District. Further, on information and belief, Defendant is subject to the Court's general jurisdiction, including from regularly doing or soliciting business, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to persons or entities in the State of Texas and in this District. Further, on information and belief, Defendant is subject to the Court's personal jurisdiction at least due to its sale of products and/or services within the State of Texas and within this District. Defendant has committed such purposeful acts and/or transactions in the State of Texas and in this District, such that it reasonably should know and expect that it could be haled into this Court because of such activity.

6. Venue is proper in this district under 28 U.S.C. § 1400(b). On information and belief, Defendant has a regular and established place of business in this District and has committed acts of infringement in this District such that this Court is a fair and reasonable venue for the litigation of this action. Defendant has a place of business at 2601 Preston Road #1176, Frisco, TX 75034, which is within the Eastern District of Texas. Defendant is registered with the

right to do business in Texas and has a registered agent in Austin, Texas. On information and belief, from and within this District Defendant has committed at least a portion of the infringements at issue in this case by making, using, selling, and/or offering for sale the Accused Instrumentality (described below), which infringes and/or performs the infringing methods within this District.

7. For these reasons, personal jurisdiction exists and venue is proper in this Court under 28 U.S.C. § 1400(b).

III. COUNT I
(PATENT INFRINGEMENT OF UNITED STATES PATENT NO. 7,546,538)

8. Plaintiff incorporates the above paragraphs herein by reference.

9. On June 9, 2009, United States Patent No. 7,546,538 (“the ‘538 patent”) was duly and legally issued by the United States Patent and Trademark Office. The ‘538 Patent is titled “System and Method for Web Browsing.” The application leading to the ‘538 patent was filed on November 10, 2001. The application leading to the ‘538 patent is continuation-in-part of application No. 09/985,415, filed on November 2, 2001, which is a continuation of application No. 09/498,079, filed on February 4, 2000, which issued as United States Patent No. 6,313,855. A true and correct copy of the ‘538 Patent is attached hereto as Exhibit A and incorporated herein by reference.

10. Flash3D is the assignee of all right, title and interest in the ‘538 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the ‘538 Patent. Accordingly, Flash3D possesses the exclusive right and standing to prosecute the present action for infringement of the ‘538 Patent by Defendant.

11. The invention of the '538 patent relates to the field of web browsers. (Ex. A at col. 1:23-27). The invention of the '538 patent is directed to systems and methods for “web browsing that displays multiple web pages thereby allowing a user to contemporaneously view more than a single web page in a window.” (Ex. A at col. 5:49-52).

12. Prior to the priority date of the '538 patent, conventional browsers in the art had the problem of only allowing one web page to be rendered at any given time for display to the user. (*Id.* at col. 1:53-55). Methods for overcoming this problem included “the user opening a second instance of the web browser and manually switching back and forth between the instances, or alternately, the user manually moving and/or resizing a window in which each instance operates so that the respective instances can be contemporaneously viewed.” (*Id.* at col. 1:55-61). The inventors overcame the disadvantages of the prior art web browser systems by inventing methods and systems for contemporaneously displaying multiple web pages for users to view. (*Id.* at col. 2:41-51).

13. The '538 patent was cited during the prosecution history of over thirty patent and patent applications owned by companies including Apple Inc., Alcatel Lucent, Google Inc., Yahoo! Inc., Canon Kabushiki Kaisha, and Samsung Electronics Co., Ltd.

14. **Direct Infringement.** Upon information and belief, Defendant has been and now is directly infringing at least claims 8, 9, 10, 11, 34, and 36 of the '538 patent in the State of Texas, in this District, and elsewhere in the United States, by actions comprising performing the claimed method for browsing web pages through use of the Microsoft HaloLens with the Microsoft Edge browser (“Accused Instrumentality”). (*See, e.g.*, <https://www.microsoft.com/en-us/hololens/apps>).

15. Upon information and belief, Defendant performs the step of rendering a first web page in a first panel using first web page data. For example, Microsoft Edge browser renders a requested URL or hyperlink in the web browser window (“first panel”) displayed in mixed reality through the Microsoft HoloLens. For example, user visits the web page (*e.g.*, YouTube.com) and taps on the “My Channel” option presented by the Microsoft Edge browser. This results in a “request” to fetch associated web page data (“first web page data”) from the YouTube server. The requested “My Channel” web page (“first web page”) is then rendered in the first window (“first panel”). (*See, e.g.*, <https://www.youtube.com/watch?v=7lEeVn3oTYs> at 2:04 of 3:00). Defendant performs the method step wherein the first web page including a plurality of user selectable references to additional web pages. The rendered web page contains hyperlinks (“references”) to a plurality of other related videos (“additional web pages”). (*See, e.g., id.*).

16. Upon information and belief, Defendant performs the step of rendering the first web page in which rendering the first web page uses a first instance of a web browsing engine. For example, the requested “My Channel” web page is rendered using Microsoft Edge browser (“first instance”). Tapping on “My Channel” on “YouTube.com” forms a request to fetch “first web page data” from the YouTube.com server which is rendered using the first instance of web browser engine in the virtual screen (“first panel”) of a HoloLens. (*See, e.g.*, https://developer.microsoft.com/en-us/windows/mixed-reality/release_notes_-_may_2016; <https://www.youtube.com/watch?v=7lEeVn3oTYs> at 1:57 and 2:04 of 3:00).

17. Upon information and belief, Defendant performs the step of requesting web page data associated with each of a plurality of selected references designated by a user from among a plurality of user selectable references. For example, user can request additional web pages by

tapping and holding a user-selectable hyperlinked video (“user-selectable references”) which opens a context menu. This context menu includes “open in new window” option that opens the associated web page in a new window (“second panel”). (*See, e.g.,* <https://www.youtube.com/watch?v=OxrfTJBBk5U&feature=youtu.be> at 1:03 of 1:29; https://developer.microsoft.com/en-us/windows/mixed-reality/release_notes_-_may_2016).

18. Upon information and belief, Defendant performs the step of rendering a web page for each of the requested web page data, wherein rendering the web page for each of the requested web page data comprises rendering the web page for each of the requested web page data using a separate instance of the web browsing engine for each of the requested web page data. User’s request to display the “selected link” in a new Microsoft Edge browser window fetches the web page corresponding to the selected link and displays it in a new window. For example, user’s selection of a link in the Twitter App in HoloLens displays the selected link in another window of the Microsoft Edge browser (“second instance”). (*See, e.g.,* <https://www.youtube.com/watch?v=nsZtFRG3Als> at 0:23 and 0:33 of 1:03).

19. With respect to claim 9, upon information and belief, Defendant performs the method step of wherein the rendering of a web page for each of the requested web page data comprises rendering a web page for each of the requested web page data in a second panel. For example, user’s request to open the selected link in a new window renders the web page corresponding to the selected link in a separate window (“second panel”) of the Microsoft Edge browser. (*See, e.g.,* <https://www.youtube.com/watch?v=nsZtFRG3Als> at 0:23 and 0:33 of 1:03).

20. With respect to claim 10, upon information and belief, Defendant performs the step of rendering a web page for each of the requested web page data that comprises rendering a web page for each of the requested web page data, and each of the web pages rendered in a

separate second panel. For example, user's request to open the selected link in a new window renders the web page corresponding to the selected link in a separate window ("separate second panel") of the Microsoft Edge browser. (*See, e.g.,* <https://www.youtube.com/watch?v=nsZtFRG3Als> at 0:23 and 0:33 of 1:03).

21. With respect to claim 11, upon information and belief, Defendant performs the step of rendering a first web page that comprises rendering the first web page using a first web browsing engine; and wherein the rendering of a web page for each of the requested web pages comprises rendering the web page for each of the requested web page data using a separate web browsing engine for each of the requested web page data. For example, a Twitter web page ("first web page") containing multiple links to additional web pages is rendered using Twitter App ("first web browsing engine"). When user selects one of the given reference link, the additional web page (requested web page) will be rendered using Microsoft Edge browsing engine (second web browsing engine). (*See, e.g.,* <https://www.youtube.com/watch?v=nsZtFRG3Als> at 0:23 and 0:33 of 1:03).

22. With respect to claim 34, upon information and belief, Defendant performs a method for browsing web pages. For example, Microsoft HoloLens enables user to browse the web pages in large virtual screens using Microsoft Edge browser. (*See, e.g.,* <https://www.microsoft.com/en-us/hololens/apps>; https://developer.microsoft.com/en-us/windows/mixed-reality/release_notes_-_may_2016 at 0:36 of 1:40).

23. Upon information and belief, Defendant performs the step of rendering a first web page using first web page data, the first web page including a plurality of user selectable references to additional web pages. Microsoft Edge browser renders a user selected URL or hyperlink in the web browser window displayed in mixed reality through Microsoft HoloLens.

For example, user visits a web page (*e.g.*, YouTube.com) and taps on the “My Channel” option presented by the Microsoft Edge browser. This results in a ‘request’ to fetch associated web page data (“first web page data”) from the YouTube server. The requested “My Channel” web page having plurality of hyperlinks or other related videos (“references to additional web pages”) is then rendered in the first window. (*See, e.g.*, <https://www.youtube.com/watch?v=7IEeVn3oTYs> at 1:57 of 3:00; <https://www.youtube.com/watch?v=7IEeVn3oTYs> at 2:04 of 3:00).

24. Upon information and belief, Defendant performs the step of rendering the first web page that comprises rendering the first web page using a first instance of a web browsing engine. For example, the requested “My Channel” web page is rendered using Microsoft Edge browser (“first instance”). Tapping on “My channel” on “YouTube.com” forms a request to fetch “first web page data” from the YouTube.com server which is rendered using the first instance of web browser engine in the virtual screen of a HoloLens. (*See, e.g.*, <https://www.youtube.com/watch?v=7IEeVn3oTYs> at 1:57 of 3:00; <https://www.youtube.com/watch?v=7IEeVn3oTYs> at 2:04 of 3:00).

25. Upon information and belief, Defendant performs the step of receiving a designation from a user corresponding to one of the plurality of user selectable references; and requesting second web page data associated with the one of the plurality of selected references. For example, user can request additional web pages by tapping and holding a user selectable hyperlinked video (“user selectable references”) which opens a context menu. This context menu includes an “open in new window” option that opens the associated web page in a new window (“second panel”). (*See, e.g.*, <https://www.youtube.com/watch?v=7IEeVn3oTYs> at 2:04 of 3:00; <https://www.youtube.com/watch?v=OxrfTJBBk5U&feature=youtu.be> at 1:03 of 1:29; https://developer.microsoft.com/en-us/windows/mixed-reality/release_notes_-_may_2016).

26. Upon information and belief, Defendant performs the step of rendering a second web page using the second web page data, wherein the rendering of the second web page comprises rendering the second web page using a second instance of said web browsing engine. User's request to display the selected link in a new Microsoft Edge browser window fetches the web page corresponding to the selected link and displays it in a new window. For example, user's selection of a link in the Twitter App in HoloLens displays the selected link in another window of the Microsoft Edge browser. (*See, e.g.,* <https://youtu.be/nsZtFRG3Als> at 0:23 of 1:03; <https://www.youtube.com/watch?v=nsZtFRG3Als> at 0:33 of 1:03).

27. Upon information and belief, Defendant performs the step wherein the first page is contemporaneously displayed with the second web page. For example, user can request additional web pages by tapping on user-selectable hyperlinked web page/video which open in the new window. For example, when user selects a hyperlink in a Twitter web page ("first web page"), an additional web page ("second web page") will open in a new window. HoloLens allows user to see both web pages ("first web page" and "second web page") simultaneously. (*See, e.g.,* <https://youtu.be/nsZtFRG3Als> at 0:23 of 1:03; <https://www.youtube.com/watch?v=nsZtFRG3Als> at 0:24 of 1:03).

28. With respect to claim 36, Defendant performs the step wherein the first web page is rendered in a first panel, and the second web page is rendered in a second panel. The first web page is displayed in a Microsoft Edge browser window ("first panel") and the second web page opens in a new Microsoft Edge browser window ("second panel"). For example, user's selection of a link in the Twitter App ("first panel") in HoloLens displays the selected link in another window of the Microsoft Edge browser ("second panel"). (*See, e.g.,* <https://www.youtube.com/watch?v=nsZtFRG3Als> at 0:24 of 1:03).

IV. COUNT II
(PATENT INFRINGEMENT OF UNITED STATES PATENT NO. 6,313,855)

29. Plaintiff incorporates the above paragraphs herein by reference.

30. On November 6, 2001, United States Patent No. 6,313,855 (“the ‘855 patent”) was duly and legally issued by the United States Patent and Trademark Office. The ‘855 Patent is titled “System and Method for Web Browsing.” The application leading to the ‘855 patent was filed on February 4, 2000. A true and correct copy of the ‘855 Patent is attached hereto as Exhibit B and incorporated herein by reference.

31. Flash3D is the assignee of all right, title and interest in the ‘855 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the ‘855 Patent. Accordingly, Flash3D possesses the exclusive right and standing to prosecute the present action for infringement of the ‘855 Patent by Defendant.

32. The invention of the ‘855 patent relates to the field of web browsers. (Ex. B at col. 1:7-10). The invention of the ‘855 patent is directed to a “system and method for web browsing that displays multiple web pages thereby allowing a user to contemporaneously view more than a single web page in a single window.” (*Id.* at col. 4:17-20).

33. Prior to the priority date of the ‘855 patent, conventional browsers in the art had the problem of only allowing one web page to be rendered at any given time for display to the user. (*Id.* at col. 1:38-40). Methods for overcoming this problem included “the user opening a second instance of the web browser and manually switching back and forth between the instances, or alternately, the user manually moving and/or resizing a window in which each instance operates so that the respective instances can be contemporaneously viewed.” (*Id.* at col. 1:40-46). The inventors overcame the disadvantages of the prior art web browser systems by

inventing methods and systems for contemporaneously displaying multiple web pages. (*Id.* at col. 2:11, *et seq.*).

34. The '855 patent was cited during the prosecution history of over 88 patents and patent applications including those owned by Apple, Facebook, Microsoft, Google, IBM, Sprint, Qualcomm, AOL, Ricoh Company, Sony Corporation, Siemens Aktiengesellschaft, Canon Kabushiki Kaisha, Adobe Systems, and the United States Navy.

35. **Direct Infringement.** Upon information and belief, Defendant has been and now is directly infringing at least claim 19 of the '855 patent in the State of Texas, in this District, and elsewhere in the United States, by actions comprising making, using, selling or offering for sale a graphic user interface through the Accused Instrumentality. Microsoft HoloLens enables users to browse web pages in large virtual screens by providing a graphical user interface in the Microsoft Edge browser. (*See, e.g.,* <https://www.microsoft.com/en-us/hololens/apps>; https://developer.microsoft.com/en-us/windows/mixed-reality/release_notes_-_may_2016 at 0:36 of 1:40).

36. Upon information and belief, the Accused Instrumentality has a first panel having a first web page rendered therein from first web page data, the first panel uses a first instance of a web browsing engine. The Microsoft Edge browser renders a user-selected URL or hyperlink in the web browser window ("first panel") displayed in mixed reality through Microsoft HoloLens. For example, user visits a web page (*e.g.,* YouTube.com) and taps on the "My Channel" option presented by the Microsoft Edge browser. This results in a "request" to fetch associated web page data ("first web page data") from the YouTube server. The requested "My Channel" web page ("first web page") is then rendered in the first window ("first panel") using the first instance of web browser engine in the virtual screen ("first panel) of the HoloLens. (*See, e.g.,*

https://developer.microsoft.com/en-us/windows/mixed-reality/release_notes_-_may_2016;
<https://www.youtube.com/watch?v=7IEeVn3oTYs> at 2:04 of 3:00).

37. Upon information and belief, the Accused Instrumentality has first web page data that includes a reference to second web page data. For example, the rendered web page contains hyperlinks (“references”) to a plurality of other related videos (“second web page data”). (*See, e.g.,* <https://www.youtube.com/watch?v=7IEeVn3oTYs> at 2:04 of 3:00).

38. Upon information and belief, the Accused Instrumentality has a second panel having a second web page rendered from the second web page data that uses a second instance of the web browsing engine. For example, user can request additional web pages by tapping and holding a user-selectable hyperlinked video (“user selectable references”) which opens a context menu. This context menu includes “open in new window” option that opens the associated web page in a new window (“second panel”) that uses a second instance of the web browsing engine. (*See, e.g.,* <https://www.youtube.com/watch?v=7IEeVn3oTYs> at 2:04 of 3:00; <https://www.youtube.com/watch?v=OxrfTJBBk5U&feature=youtu.be> at 1:03 of 1:29; https://developer.microsoft.com/en-us/windows/mixed-reality/release_notes_-_may_2016). For example, user’s selection of a link in the Twitter App in HoloLens displays the selected link in another window of the Microsoft Edge browser (“second instance”). (<https://www.youtube.com/watch?v=nsZtFRG3Als> at 0:23 and 0:33 of 1:03).

39. **Indirect Infringement.** Upon information and belief, Defendant has been and now is indirectly infringing by way of inducing infringement and contributing to the infringement of least claim 19 of the ‘855 patent in the State of Texas and elsewhere in the United States, by actions comprising providing the Accused Instrumentality to Defendant’s customers and providing the Accused Instrumentality for performing the claimed method.

Defendant is a direct and indirect infringer, and its customers using the Accused Instrumentality are direct infringers.

40. Upon information and belief, Defendant had actual knowledge of the '855 patent since at least as early as September 5, 2002, when the '855 patent was cited during the prosecution history of patent application U.S. App. No. 09/540,069) owned by Defendant. The '855 patent was also disclosed by the Defendant to the USPTO and/or cited by the USPTO during the prosecution histories of U.S. Patent No. 6,765,567, No. 7,119,819, No. 7,921,376, No. 8,856,687, No. 7,512,902, No. 7,225,407, No. 7,747,965, No. 8,341,541, No. 7,478,326, No. 7,552,397, and No. 8,136,047, which are owned by Defendant.

41. On information and belief, since becoming aware of the '855 patent, Defendant is and has been committing the act of inducing infringement by specifically intending to induce infringement by providing the Accused Instrumentality to its customers and by aiding and abetting their use in a manner known to infringe by Defendant, as described above. Upon information and belief, Defendant encourages customers to use the Accused Instrumentality for conducting the directly infringing use and advertises the directly infringing use to customers despite knowing of the infringing use. On information and belief, Defendant knew or should have known that through its acts it was and is inducing infringement of the '855 patent since it was aware of the '855 patent and began infringing at least as early as September 5, 2002.

42. On information and belief, Defendant is and has been committing the act of contributory infringement by intending to provide the identified Accused Instrumentality to its customers knowing that it is a material part of the invention, knowing that its use was made and adapted for infringement of the '855 patent, and further knowing that the system is not a staple article or commodity of commerce suitable for substantially noninfringing use.

V. COUNT III
(PATENT INFRINGEMENT OF UNITED STATES PATENT NO. 6,313,855)

43. Plaintiff incorporates the above paragraphs herein by reference.

44. On information and belief, prior to the filing of the complaint, Defendant's infringement was willful and continues to be willful. On information and belief, prior to the filing of this Complaint, Defendant was aware of the '855 patent through at least the prosecution of U.S. Patent No. 6,765,567, No. 7,119,819, No. 7,921,376, No. 8,856,687, No. 7,512,902, No. 7,225,407, No. 7,747,965, No. 8,341,541, No. 7,478,326, No. 7,552,397, and No. 8,136,047, which are owned by Defendant. Defendant knew or should have known that it was infringing at least claim 19 of the '855 patent. On information and belief, Defendant's willful infringing activities of a valid patent constitutes egregious misconduct.

45. Plaintiff has been damaged as a result of Defendant's infringing conduct. Defendant is thus liable to Plaintiff for damages in an amount that adequately compensates Plaintiff for Defendant's infringement of the '538 patent and '855 patent, *i.e.*, in an amount that by law cannot be less than would constitute a reasonable royalty for the use of the patented technology, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

46. On information and belief, Defendant will continue its infringement of one or more claims of the '538 patent and '855 patent unless enjoined by the Court. Defendant's infringing conduct thus causes Plaintiff irreparable harm and will continue to cause such harm without the issuance of an injunction.

47. On information and belief, Defendant has had notice of the '538 patent and '855 patent by operation of law and as described above, and there are no marking requirements that have not been complied with by Plaintiff.

VI. JURY DEMAND

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests 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 United States Patent Nos. 7,546,538 and 6,313,855 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 to and costs incurred by Plaintiff because of Defendant's infringing activities and other conduct complained of herein;
- c. Judgment that Defendant's infringement is willful and egregious and Plaintiff is entitled to enhanced damages;
- 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;
- e. That Defendant be permanently enjoined from any further activity or conduct that infringes one or more claims of United States Patent Nos. 7,546,538 and 6,313,855; and
- f. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 14, 2017

Respectfully submitted,

/s/ David R. Bennett

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