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11 BIG BABOON, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 BIG BABOON, INC., a Delaware corporation,
16 Plaintiff,

17 v.

18 SAP AMERICA, INC., a Delaware Corporation,
and HP INC., a Delaware Corporation,
19 Defendants.
20

Case No. CV17-02082 HSG (EDL)

JURY DEMAND

**PLAINTIFF’S FIRST AMENDED
COMPLAINT**

Judge: Hon. Haywood S. Gilliam, Jr.
Ctm: 2, 4th Fl.

Complaint Filed: April 13, 2017
Trial Date: None set.

22 Plaintiff, Big Baboon, Inc. (“BBI”) sues Defendants SAP America, Inc. (“SAP”), and HP
23 Inc. (formerly Hewlett-Packard Company) (“HP”) (collectively “Defendants”) and alleges as
24 follows:

25 **I.**

26 **INTRODUCTION**

27 1. This is an exceptional case of willful patent infringement. Defendants, including
28 one of the world’s largest software companies, SAP, have deliberately waged a campaign to

1 exterminate the patent rights of an American inventor and his small company. Plaintiff pioneered
2 modern business-to-business e-commerce by developing and patenting automated methods of
3 performing business functions via the web. Plaintiff's patented technology, in order to increase
4 business efficiency and accuracy, reduced the requirements for human interaction and increased
5 access to real-time synchronized information via the web. This technology is now the foundation
6 of a multi-billion dollar a year industry, through what is known as "enterprise software" and related
7 services.

8 2. BBI is the owner of US Patent Nos. 6,343,275 (the "'275 patent") and 6,115,690
9 (the "'690 patent"). In 2009, Plaintiff sued defendant HP along with numerous other defendants
10 (but not SAP) for patent infringement in the Central District of California: Case No. 2:09-cv-
11 01198-SVW-SS ("the CACD action"). In that litigation, claim 15 of the '275 patent was not
12 alleged to be infringed.

13 3. SAP makes enterprise software that was originally called R/3 that is used by
14 defendant HP and many of the other defendants in that litigation, and which was the subject of
15 infringement allegations in the earlier lawsuit. Upon information and belief, SAP indemnified HP
16 and other defendants in that action and SAP's counsel filed *ex parte* reexaminations at the Patent
17 Office against the '275 and '690 patents on April 28, 2010. In those reexamination requests,
18 SAP's counsel argued that the SAP R/3 system, specifically the R/3 Release 3.0E, with its
19 components described its operational manuals, anticipated the '275 and '690 patents, even using
20 declarations from SAP personnel outlining how the elements of all claims of the patents are found
21 in the R/3 system.

22 4. The Central District court stayed the patent infringement action on February 8,
23 2011, in view of the reexaminations.

24 5. As a result of the reexamination proceedings, the Patent Office subsequently
25 cancelled all claims of the '690 patent, and cancelled all but independent claim 15 of the '275
26 patent and allowed new dependent claims 20-34 which depend from claim 15. Claim 15 was
27 confirmed as patentable and claims 20-34 added in a reexamination certificate that issued on
28 August 19, 2015.

1 6. SAP and HP filed a petition for Post-Grant Review of a Covered Business Method
2 (CBM) patent against claims 15 and 20-34 of the '275 patent on December 18, 2015. In their
3 petition, in an effort to show unpatentability of the '275 patent, the Defendants filed claim charts
4 that elucidated the relationship between the '275 patent and SAP's specific technology. These
5 claim charts of that petition argued that SAP's R/3 3.0E system satisfied every limitation of claim
6 15, except for web-enablement of software modules (which is clearly satisfied by other publicly
7 available facts about how the R/3 System operates). SAP also filed a declaration averring that the
8 R/3 3.0E System did ultimately become web-enabled. As is explained further, through its CBM
9 filings, SAP and HP essentially showed the math of how the R/3 web-enabled system operates and
10 demonstrated that the claims of the '275 patent read onto that system. Through their efforts to
11 exterminate the '275 patent by proffering a claim chart and expert factual declaration, the
12 Defendants admitted that the web-enabled SAP R/3 System infringes at least claim 15.

13 7. On June 28, 2016, the Patent Office denied institution of the CBM patent review,
14 not disputing defendants' factual contentions, especially ultimate web-enablement of the R/3
15 System, but rather, finding that the defendants failed to articulate sufficient reasoning as to why
16 claims 15 and 20-34 would be obvious in view of the R/3 system specifically as of December 22,
17 1996—the critical date for prior art to the '275 patent.

18 8. In the CBM request, Defendants also alleged that claims 15 and 20-34 were invalid
19 under 35 U.S.C. § 101, under the precedent of the Supreme Court case of *Alice Corp. Pty. Ltd. v.*
20 *CLS Bank Int'l*, 134 S. Ct. 2347 (2014). In the Petition Denial, the Patent Office also stated that
21 the claims were not directed to an "abstract" idea.

22 9. The reexamination certificate for the '690 patent was noticed for issuance on March
23 16, 2017, and this issuance caused the stay in the CACD action to lift. Because claim 15 was not
24 asserted in the CACD action and all other claims have been cancelled by the Patent Office, the
25 Central District court dismissed that action on April 12, 2017. The court stated in the order of
26 dismissal that claim 15 was not part of that action.

27 10. SAP and HP wagered it all attempting to administratively kill the claims of the '275
28 patent and lost. They had to admit how the remaining claims of the '275 patent correspond to their

1 R/3 System technology in their gamble to kill the patent, and now they cannot walk back down
2 from the admissions that demonstrate infringement. Notwithstanding Defendants' repeated efforts
3 to invalidate Plaintiff's patent rights, a key set of claims have withstood the attacks at the Patent
4 Office. BBI seeks damages against Defendants for their admitted infringement and the willful
5 violations of its patent rights.

6 **II.**

7 **THE PARTIES**

8 11. Big Baboon, Inc. ("BBI") is incorporated under the laws of Delaware with its place
9 of business in Palo Alto, California.

10 12. Upon information and belief, Defendant SAP America, Inc., is a Delaware
11 Corporation with its U.S. headquarters located at 3999 West Chester Pike, Newtown Square, PA
12 19073, with multiple permanent facilities and employees involved in the business of selling
13 software and services within this district, including facilities at San Ramon and Palo Alto,
14 California.

15 13. Upon information and belief, Defendant HP Inc., is a corporation existing and
16 organized under the laws of Delaware, and having its principal place of business at 3000 Hannover
17 Street, Palo Alto, California. Upon information and belief, HP sells and distributes computers and
18 computer related hardware and software nationally, and provides computer related services to
19 individual consumers and to business in this district, across the United States and abroad, including
20 to businesses over the Internet through its HP.com business-to-business web site.

21 **III.**

22 **JURISDICTION AND VENUE**

23 14. This Court has original subject matter jurisdiction over the causes of action for
24 patent infringement asserted herein, pursuant to 28 U.S.C. §§ 1331 and 1338.

25 15. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

26 16. The Court has personal jurisdiction over the Defendants by virtue of these
27 companies' developing, selling and offering for sale infringing products within the State of
28 California. The Court also has general jurisdiction over the Defendants.

1 17. Venue is proper in this district under 28 U.S.C. §§ 1391(b)-(c) and 1400(b).

2 **IV.**

3 **INTRADISTRICT ASSIGNMENT**

4 18. This case is a patent infringement dispute that is appropriate for district-wide
5 assignment.

6 **V.**

7 **THE ASSERTED PATENT**

8 19. On January 29, 2002, the United States Patent and Trademark Office issued U.S.
9 Patent No. 6,343,275 (“the ‘275 patent”), to Charles Wong (BBI’s founder) for his invention
10 entitled “Integrated Business-to-Business Web Commerce and Business Automation System.” That
11 patent has been assigned to BBI. The ‘275 patent is hereby incorporated by reference. The ‘275
12 patent with its corresponding reexamination certificate is attached as Exhibit 1. Claims 15 and 20-
13 34 remain in the ‘275 patent.

14 20. As noted in the examiner’s reasons for allowance, the ‘275 Patent may cover,
15 among other things, “business-to-business web commerce between a first business acting as a
16 supplier and a second business acting as a purchaser, using a computer net including a relational
17 database server providing for real-time synchronized data update, in combination with the other
18 limitations of the claims.”

19 21. Charles Wong, an individual, is the owner of all stock in BBC, a Delaware
20 subchapter S corporation which has been the legal owner of the ‘275 Patent for more than six (6)
21 years.

22 22. The ‘275 Patents is the result of Mr. Wong’s pioneering developments in the area of
23 business-to-business e-commerce and the creation of highly automated methods of performing
24 business functions to provide for the operation of e-commerce with reduced requirement for human
25 interaction and increased access to real-time synchronized information via the Web. Mr. Wong’s
26 pioneering patents have been cited in business-to-business patents filed by more than 40
27 companies.

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1 23. In the 1980's, Mr. Wong, a graduate of Stanford University with a master's degree
2 in engineering, left his job at Fairchild Semiconductor to start his own business, MegaNetworks,
3 which began as a reseller for computer peripherals and then expanded its business into selling and
4 configuring personal computers, Sun workstations, and IBM RISC minicomputers, as well as
5 providing network and system integration support. Mr. Wong's company competed with larger
6 more established companies and ultimately provided computers and computer networks to
7 customers including Pacific Gas & Electric ("PG&E"), Pacific Bell ("PacBell") and Chevron.

8 24. In 1994, Mr. Wong's company was a system integrator and computer reseller for-
9 companies like PacBell and TRW. As such, he was running a small business in a market segment
10 with margins typically less than seven percent. He wanted to compete against the larger companies
11 such as IBM and Dell that were enjoying much higher margins. To compete with these companies
12 and to hopefully grow his company, Mr. Wong had to figure out how to make his business more
13 efficient and scalable. He had to figure out how to reduce his costs, reduce losses on receivables
14 and speed-up collection, and improve customer response without compromising quality and
15 service.

16 25. In order to compete with his much larger rivals, Mr. Wong conceived of the
17 inventions described and claimed in his patents in order to use the new technology of 1996, the
18 open Internet, to improve the performance of computers for business processing and create a
19 virtual company, a company, which, through access to the Internet, used its suppliers as its
20 warehouse and its customers as a source of working capital. This technology avoided both the risk
21 of inventorying soon-to-be-obsolete components and any need to borrow working capital from
22 companies like IT&T or banks. The result of the efficiencies created through these inventions
23 initially enabled Mr. Wong and his company to successfully compete against much larger rivals
24 such as Dell, Compaq, and others as shown by his increased success in making sales to major
25 companies such as, Pacific Bell, PG&E, and Chevron.

26 26. In an attempt to commercialize his invention, Mr. Wong in the late 90's assigned all
27 of his rights in the '275 Patent to BBI.

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FIRST CLAIM FOR RELIEF**(Patent Infringement Against SAP America)**

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2
3 27. Plaintiff incorporates by reference each and every allegation contained in
4 Paragraphs 1 through 26 as though fully set forth.

5 28. SAP has, within the past six years, directly infringed and is infringing independent
6 claim 15 and dependent claims 20-34 of the '275 Patent by making, using, and/or selling in this
7 judicial district and elsewhere the inventions claimed in the '275 Patent.

8 29. SAP has been a major provider of business-to-business computer software sales and
9 services via the Web, specifically including modified versions of R/3 Release 3.0E which include
10 web-functionality, which ultimately became the SAP ERP Central Component (ECC). Updated
11 releases to the R/3 Release 3.0E that included web-based functionality are believed to include R/3
12 Release 3.1, SAP R/3 Enterprise Edition 4.0B, SAP R/3 Enterprise Edition 3.11, SAP R/3
13 Enterprise Edition 4.3, SAP R/3 Enterprise Edition 4.5B, SAP R/3 Enterprise Edition 4.6B, SAP
14 R/3 Enterprise Edition 4.6C, SAP R/3 Enterprise Edition 4.6F, SAP R/3 Enterprise 4.7X110, SAP
15 R/3 Enterprise 4.7X200, SAP NetWeaver, SAP ERP Central Component (ECC) 5.0, and SAP ERP
16 Central Component (ECC) 6.0.

17 30. Based upon SAP's documentation, the R/3 Release 3.0E upgraded for web-
18 functionality modules ultimately was included in a product made, sold, and serviced by SAP
19 generally called S/4 HANA. Variants of the SAP S4 HANA system are believed to be SAP S/4
20 HANA 1511, SAP S4 HANA 1610, SAP S4 HANA 1709, SAP S/4HANA Cloud, SAP Simple
21 Finance, and SAP Simple Suite.

22 31. Each variant of the R/3 Release 3.0E that was upgraded for web-functionality
23 provides for automated integration and provision of information via the Web from multiple
24 traditionally distinct business domains, including those dealing with product information and
25 financial status, which incorporate aspects of the inventions claimed in the '275 Patent.

26 32. In the '275 patent reexamination, on April 28, 2010, Klarquist Sparkman, counsel
27 for SAP, filed at the US Patent and Trademark Office a claim chart arguing element-by-element
28 that all elements of claim 15 of the '275 patent were found within SAP documentation called "R/3

1 Release 3.0E Online Documentation in View of R/3 on the Internet White Paper, in Further View
2 of Using SAP R/3". Appendix Z as recorded at the USPTO is attached as Exhibit 2.

3 33. Exhibit 2 details the functions of the R/3 Release 3.0E system with respect to the
4 steps of the method of claim 15.

5 34. SAP and HP also filed the Declaration of Philip Greenspun in Support of their
6 Petition for Covered Business Method Review of the '275 patent, filed at the US Patent and
7 Trademark Office on December 18, 2015 ("Greenspun Declaration"). A true and correct copy of
8 the Declaration of Greenspun as recorded at the USPTO is attached hereto as Exhibit 3. In that
9 Declaration, SAP's declarant Greenspun specifically stated that SAP added "web browser
10 interfaces to its R/3 software" to the R/3 3.0E System that were identical to the "web-enabled
11 software module" of claim 15.

12 35. Other SAP documentation confirms that this statement by Greenspun is correct. For
13 example, the SAP R/3 Handbook, Third Edition, *McGraw-Hill/Osborne*, 2006, p. 20. States: "By
14 year end 1996, SAP announced the availability of release 3.1. This version was known as the
15 Internet release because the main new features and capabilities related to the possibility of
16 expanding the capacity of the R/3 systems, using the Internet for doing business while preserving
17 the functionality and support of the core R/3 applications. Users would be able to make
18 transactions with the system directly using their Internet browsers. Release 3.1 allows for efficient
19 communication in the business world among companies, customers, and providers."

20 36. The web-enabled R/3 systems, ECC, and S/4 HANA variants made, used, and
21 or/sold by SAP, that utilize the R/3 Release 3.0E system with web functionality, including the
22 ECC, infringe at least claim 15 of the '275 patent. Claim 15 recites:

23 15. A method comprising the steps of:

24 providing an end-to-end, business-to-business, e-commerce business
25 automation software for automation business functions across multiple business
domains;

26 identifying multiple modules of the software; and

27 via Web administration, producing a software configuration in which
28 selected ones of the modules are enabled or disabled;

1 wherein the software producing a workscope/workflow structured display of
2 complex database records each comprising multiple lines of text and pertaining to
3 both a first party to a business transaction and a second party to the business
 transaction, the structured display constituting an integrated decision-making
 environment for a particular business function.

4 37. SAP's web-enabled R/3 system, ECC, and S/4 HANA variants that use the ECC,
5 provide an end-to-end, business-to-business, e-commerce business automation software for
6 automation business functions across multiple business domains. These systems are specifically
7 for the automation of business functions, and the specific steps by which these systems perform
8 this element are set forth on Pages 1-7 of Exhibit 2.

9 38. SAP's web-enabled R/3 system, ECC, and S/4 HANA variants that use the ECC,
10 identify multiple modules of the software. These systems specifically identify multiple modules of
11 the software, such as "Accounting," "Logistics," and "Quality Management." The specific steps
12 by which these systems perform this element are set forth on Pages 7-15 of Exhibit 2.

13 39. SAP's web-enabled R/3 system, ECC, and S/4 HANA variants that use the ECC,
14 perform the step of, via Web administration, producing a software configuration in which selected
15 ones of the modules are enabled or disabled. This added feature and functionality to the original
16 non-web enabled R/3 3.0E system is described in the Greenspun Declaration, ¶59, Exhibit 3, and is
17 also referenced in the articles used as Exhibits to that declaration, and is also described in SAP
18 documentation. At some point in 1997 or thereafter, the web-enabled R/3 system was made and
19 sold by SAP which included web-enabled or disabled software modules, as Greenspun attests.

20 40. SAP's declarant Greenspun specifically averred that SAP added to the R/3 System
21 "web browser interfaces to its R/3 software" that were identical to the "web-enabled software
22 module" of claim 15. See Ex. 3.

23 41. SAP's web-enabled R/3 system, ECC, and S/4 HANA variants that use the ECC,
24 produce a workscope/workflow structured display of complex database records each comprising
25 multiple lines of text and pertaining to both a first party to a business transaction and a second
26 party to the business transaction, with the structured display constituting an integrated decision-
27 making environment for a particular business function. The R/3 system produces, in one example,
28

1 a “workscape/workflow structured display of complex database records” for a response to a
2 vendor’s request for quote (“RFQ”). The specific step of the production of the structured display
3 by the SAP web-enabled R/3 system is described in Exhibit 2, at Pages 25-32.

4 42. By reason of SAP’s infringing activities, Plaintiff has suffered, and will continue to
5 suffer, substantial damages in an amount to be proven at trial, but no less than a reasonable royalty.

6 43. SAP is not licensed or otherwise authorized to make, use, import, sell, or offer to
7 sell any invention claimed in the ‘275 Patent, and Defendants’ conduct is, in every instance,
8 without Plaintiff’s consent.

9 44. SAP was aware of the ‘275 patent and claim 15 at least as early as February of
10 2009, and BBI’s allegations of infringement thereof. Therefore, all infringement is willful.

11 **SECOND CLAIM FOR RELIEF**

12 **(Patent Infringement Against HP)**

13 45. Plaintiff incorporates by reference each and every allegation contained in
14 Paragraphs 1 through 44 as though fully set forth.

15 46. HP has, within the past six years, infringed and is infringing claims 15 and
16 dependent claims 20-34 of the ‘275 Patent by making, using, or selling in this judicial district and
17 elsewhere the inventions claimed in the ‘275 patent.

18 47. HP has been a major provider of business-to-business computer sales and services
19 via the Web, specifically including its use of the enterprise resource planning systems made and
20 maintained by SAP, such as modified versions of R/3 Release 3.0E which include web-
21 functionality, which ultimately became the SAP ERP Central Component (ECC). Updated releases
22 to the R/3 Release 3.0E that included web-based functionality are believed to include R/3 Release
23 3.1, SAP R/3 Enterprise Edition 4.0B, SAP R/3 Enterprise Edition 3.11, SAP R/3 Enterprise
24 Edition 4.3, SAP R/3 Enterprise Edition 4.5B, SAP R/3 Enterprise Edition 4.6B, SAP R/3
25 Enterprise Edition 4.6C, SAP R/3 Enterprise Edition 4.6F, SAP R/3 Enterprise 4.7X110, SAP R/3
26 Enterprise 4.7X200, SAP ERP Central Component (ECC) 5.0, SAP NetWeaver, and SAP ERP
27 Central Component (ECC) 6.0.

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6. That Plaintiff shall have such other and further relief as the Court deems just and proper.

Dated: April 17, 2018

PROCOPIO, CORY, HARGREAVES
& SAVITCH LLP

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