

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

EPIC IP LLC,

Plaintiff,

v.

FAREPORTAL INC.,

Defendant.

CASE NO. 1:18-cv-00880-KPF

PATENT CASE

JURY TRIAL DEMANDED

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AGAINST FAREPORTAL INC.**

Plaintiff Epic IP LLC files this First Amended Complaint for Patent Infringement against Fareportal Inc., pursuant to Rule 15(a)(1)(B), Fed.R.Civ.P., and the Court’s Order (Dkt. No. 26), and would respectfully show the Court as follows:

I. THE PARTIES

1. Plaintiff Epic IP LLC (“Epic” or “Plaintiff”) is a Texas limited liability company with its principal place of business at 300 Custer Road, Suite 270, Plano, Texas 75075.

2. On information and belief, Defendant Fareportal Inc. (“Defendant”) is a corporation organized and existing under the laws of New York, with a place of business at 135 West 50 Street, Suite 500, New York, NY 10020.

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 New York Long-Arm Statute, due

at least to its business location and business in this forum, including at least a portion of the infringements alleged herein. Furthermore, Defendant is subject to this Court's specific and general personal jurisdiction because Defendant is a New York corporation.

5. Without limitation, on information and belief, within this state, Defendant has used 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 New York. Further, on information and belief, Defendant is subject to the Court's general jurisdiction, including from regularly doing or soliciting business, maintaining a business location within this District, engaging in other persistent courses of conduct, and deriving substantial revenue from goods and services provided to persons or entities in New York. 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 New York. Defendant has committed such purposeful acts and/or transactions in New York such that it reasonably should know and expect that it could be haled into this Court as a consequence of such activity.

6. Venue is proper in this district under 28 U.S.C. § 1400(b). On information and belief, Defendant is incorporated in New York and has a business location in this District. On information and belief, from and within this District Defendant has committed at least a portion of the infringements at issue in this case.

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. 6,434,599)

8. Plaintiff incorporates the above paragraphs herein by reference.

9. On August 13, 2002, United States Patent No. 6,434,599 (“the ‘599 Patent”) was duly and legally issued by the United States Patent and Trademark Office. The ‘599 Patent is titled “Method and Apparatus for On-Line Chatting.” A true and correct copy of the ‘599 Patent is attached hereto as Exhibit A and incorporated herein by reference.

10. Epic is the assignee of all right, title and interest in the ‘599 patent, including all rights to enforce and prosecute actions for infringement and to collect damages for all relevant times against infringers of the ‘599 Patent. Accordingly, Epic possesses the exclusive right and standing to prosecute the present action for infringement of the ‘599 Patent by Defendant.

11. The invention in the ‘599 Patent relates to methods and apparatuses for an improved on-line chat room in order to provide “on-line users with enhanced chatting experience that is more closely related to their real world experience.” (Ex. A at col. 1:55-57). On-line chat rooms are a specific type of on-line communication that is different from other electronic communication such as e-mail and instant messaging. A chat room is a virtual room that allows people to communicate with each other interactively in real time where a user’s message appears almost immediately. This contrasts with other methods of on-line communications, such as e-mail, where users communicate more slowly by sending individual messages using an e-mail server, or instant messaging, in which communication requires knowing screen names to send messages using a specific program. Chat rooms also require an active decision to participate in the communication, as opposed to e-mail or instant messaging where unsolicited messages can be sent.

12. Prior art on-line chatting required users to go to a pre-established on-line chat room and chat with users. (*Id.* at col. 1:23-25). The chat rooms were typically organized by subject matters, for example movies, TV shows, and social. (*Id.* at col. 1:25-28). Interest groups

hosted these subject matter oriented chat rooms, such as video game players interest groups, or hosted by one of the portals such as Yahoo and MSNBC. (*Id.* at col. 1:28-31). In addition to the on-line chatrooms being pre-established and subject matter organized by characteristics, prior art chatrooms also typically shared a number of other common characteristics, such as the requirement of pre-registration and log-in, and scheduled chat times. (*Id.* at col. 1:32-36). The inventors found this chatroom structure too confining because it prevented the creation of new chatrooms by the user on whatever topics interested them. (*Id.* at col. 1:37-45). The inventors wanted users to be able to create their own chatrooms dynamically and without having to pre-register to obtain a user ID, password, schedule a time for the chatroom, or constrain the topic of conversation to the pre-established topic of the chatroom. (*Id.* at col. 1:49-54).

13. The prosecution history of the '599 Patent also explains the inventive concepts of the claims over the prior art. The prior art disclosed pre-established chat rooms with pre-existing organizational relationships between the users. (Ex. B (Appl. No. 09/409,767, Sept. 7, 2001 Resp. to Office Action) at 3). Furthermore, in the prior art, users visiting informational web pages could not dynamically form chat rooms that were unaffiliated with any preestablished chat room. (*Id.*). In contrast, the claimed invention allows for chatting between two users of an information web page that do not have a pre-existing relationship to chat using dynamically formed chat rooms that are unaffiliates with any pre-established chat rooms. (*Id.*). The invention therefore provides a mechanism that enables and efficiently facilitates communications between users at an information page of a website in a manner not found in the prior art. (*Id.*). As a result of these inventive concepts and the benefits over the prior art mechanisms, the claims were thereby allowed. The claimed invention is therefore not well-understood, routine, or conventional to a skilled artisan.

14. To correct the flaws in the prior art systems and to improve the functionality and operation of the on-line chat sessions for users, the inventors created a method and apparatus by which on-line users visiting an information page could have the dynamic formation of a chat sessions to chat with a second on-line user related to the information page. (*Id.* at col. 1:60-63). The dynamic formation and chat session is facilitated by the information site. (*Id.* at col. 1:63-65).

15. The '599 patent was cited during the prosecution history of over one hundred patent and patent applications owned by companies including Apple, Facebook, Google, Microsoft, Sony, IBM, AT&T, Fujitsu, Siemens, Nintendo, Nokia, Yahoo!, AOL, Cisco, Casio, Verizon, British Telecom, and Research in Motion.

16. **Direct Infringement.** Upon information and belief, Defendant has been directly infringing at least claims 1-4 and 19 of the '599 patent in New York, and elsewhere in the United States, by performing actions comprising using or performing a method of on-line chatting that satisfies the steps of the claimed method, including without limitation through the method implemented using Defendant's chat feature ("Accused Instrumentality").

17. On information and belief, the Accused Instrumentality performs a method of on-line chatting using the "Live Help" feature on its website.

(See <https://www.cheapoair.com/customersupport/>).

(Id.).

MARIA
Thanks, i will get back to you soon. 10:05 PM

REID
Before you go, is there anything else I can help you with? 10:05 PM

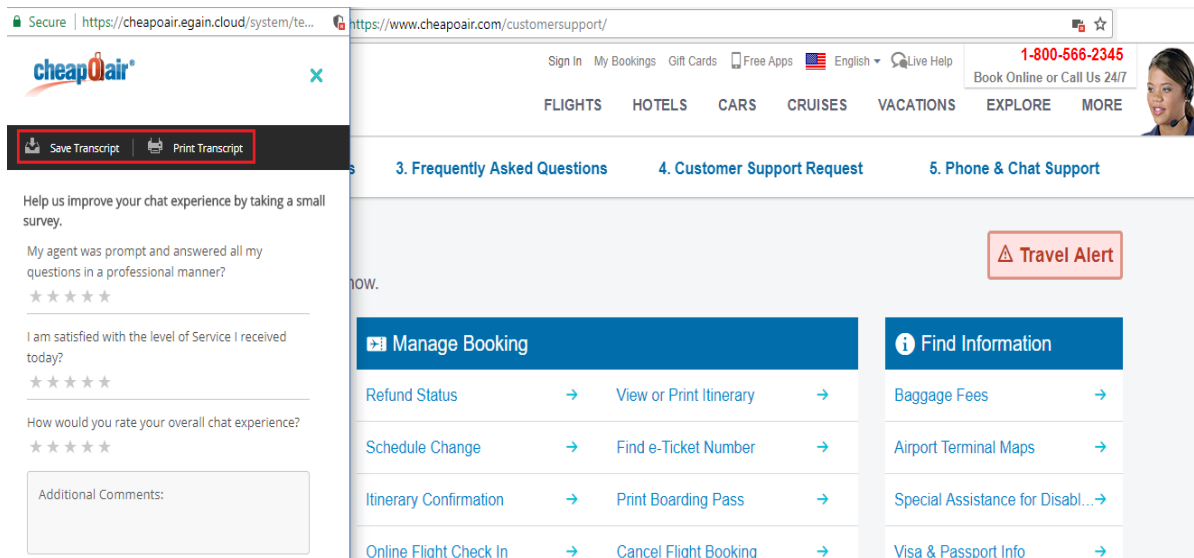
MARIA
I will confirm all the travel details and get back. 10:06 PM

MARIA
bye 10:07 PM

REID
Sure.
Thank you for chatting with cheapoair today. It has been a pleasure assisting you. Should you need further assistance today, please click on the chat button to chat with us again. We appreciate your business. You may click the Close button on the chat window to close this chat.
10:07 PM

Reid has ended the chat

(Id.).



(Id.). The accused instrumentality facilitates a visit (e.g., using a communications protocol, such as hypertext transfer protocol (http), employing TCP/IP as the underlying communications

protocol) by a first on-line user (e.g., a user visiting defendant's website) to an information page of an information site (e.g., <https://www.cheapoair.com/customersupport/> and subpages).

18. The Accused Instrumentality facilitates dynamic formation of a chat session unaffiliated with any pre-established chat room for the first on-line user (e.g., the user visiting Defendant's website) and a second on-line user (e.g., customer support representative) to chat with each other. For example, upon a request by a first on-line user to chat with a customer service representative, Defendant's website creates a new chat session in a window for use between the user visiting Defendant's website and a customer support representative for Defendant's website. The user visiting Defendant's website and the customer support representative for Defendant's website chat with each other using the new chat session. Defendant's website has a computer script that corresponds to the initiation of the formation of a chat session between the first on-line user (e.g., the user visiting defendant's website) and the second on-line user (e.g., customer support representative). (<https://www.cheapoair.com/customersupport/>).

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▼<div class="eg-chat-altEngmt">
  ▼<div id="outer" style="width: 359px;">
    ▶<div class="queue-status" style="display: none;">...</div>
    ▼<div id="alt-engmt-panel">
      <!-- The attributes tabindex, role and aria-label are added for the screen reader -->
      ▶<div id="altEngmtMessage" tabindex="0" role="application" aria-label="Sorry, all our chat agents are currently busy. Would you like to try one of these options instead?">...</div>
      ▼<table id="altEngmt">
        ▼<tbody>
          ▼<tr class="altEngmt-row">
            <!-- keypress event added for accessibility to fire onclick using ENTER when the element is in focus -->
            ▶<td onclick="App.utils.submitUrl('http://customer.egain.net/system/templates/clicktocall/sunburst/#entrypoint/1000?languageCode=en&countryCode=US');" onkeypress="if(event.keyCode == 13) App.utils.submitUrl('http://customer.egain.net/system/templates/clicktocall/sunburst/#entrypoint/1000?languageCode=en&countryCode=US');" bgcolor="#22A0D8">...</td>
              <td style="width: 2px"></td>
            <!-- keypress event added for accessibility to fire onclick using ENTER when the element is in focus -->
            ▶<td onclick="App.utils.submitUrl('mailto:support@company.com');" onkeypress="if(event.keyCode == 13) App.utils.submitUrl('mailto:support@company.com');" bgcolor="#5CC8E5">...</td>
              <td style="width: 2px"></td>
            <!-- keypress event added for accessibility to fire onclick using ENTER when the element is in focus -->
            ▶<td onclick="App.utils.submitUrl('http://customer.egain.net/system/templates/selfservice/kiwi/index.html#/help/customer/locale/en-US/portal/400000000001000');" onkeypress="if(event.keyCode == 13) App.utils.submitUrl('http://customer.egain.net/system/templates/selfservice/kiwi/index.html#/help/customer/locale/en-US/portal/400000000001000');" bgcolor="#23C4BC">...</td>
          </tr>
        </tbody>
      </table>
    </div>
  </div>
</div>

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(<https://www.cheapoair.com/customersupport/>).

19. The Accused Instrumentality facilitates the chat session through which the first (e.g., the user visiting Defendant's website) and second on-line users (e.g., customer support representative) chat with each other. The Accused Instrumentality monitors the chat session, terminates the chat session when one or more of the chat participants have left the chat session, and delivers a transcript of the chat session.

MARIA
Thanks, i will get back to you soon. 10:05 PM

REID
Before you go, is there anything else I can help you with? 10:05 PM

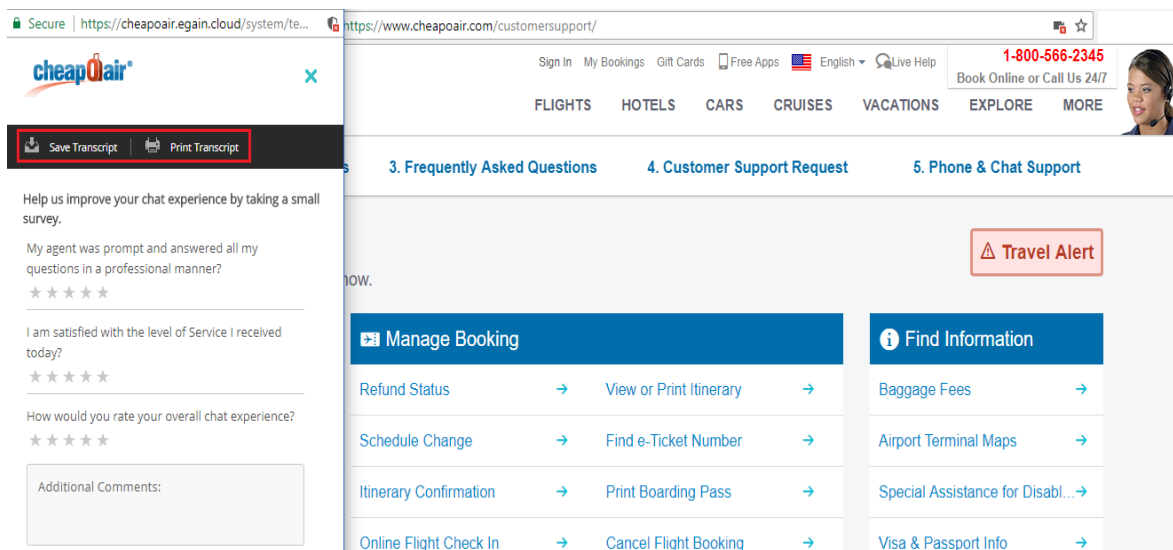
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10:07 PM

Reid has ended the chat

(<https://www.cheapoair.com/customersupport/>).



(See *id.*).

20. The Accused Instrumentality facilitates dynamic formation of a chat session unaffiliated with any pre-established chat room by providing a mechanism (*e.g.*, chat icon) to the first on-line user (*e.g.*, the user visiting defendant's website) to initiate formation of the unaffiliated chat session. Once the first online user clicks the chat icon initiation of dynamic formation of chat session takes place.

21. The Accused Instrumentality provides a mechanism to the first on-line user (*e.g.*, the user visiting the Defendant's website) to initiate formation of an unaffiliated chat session comprises providing a selectable icon (*e.g.*, chat icon) for the first on-line user (*e.g.*, the user visiting the Defendant's website) to indicate the first on-line user's desire to chat with another non-particularized on-line user (*e.g.*, customer support representative that is not associated with any particular help problem).

22. The Accused Instrumentality provides a mechanism to initiate formation of the unaffiliated chat session further comprises providing one or more dialog panels for the first on-line user (*e.g.*, the user visiting the Defendant's website) to specify one or more descriptive

characteristics (*e.g.*, name, phone number, email address) of the first on-line user (*e.g.*, the user visiting the Defendant's website).

23. With respect to claim 19, the Accused Instrumentality is an information server. (*e.g.*, <https://www.cheapoair.com/>; <https://www.cheapoair.com/customer-support/>). The Accused Instrumentality comprises a plurality of information pages (*e.g.*, <https://www.cheapoair.com/> and subpages) to be selectively provided to a client computer responsive to the client computer's request.

24. The Accused Instrumentality provides a first script/applet to be included with a responsive information page (*e.g.*, the page which is transmitted to the client computer in response to the request of client computer) to enable the client computer to initiate dynamic formation of a chat session unaffiliated with any pre-established chat room for a user of the client computer to chat with a second user of interest, also visiting the information server. The script shown below enables the client computer to initiate the of generation of a chat session, by means of clicking on the 'Live Help' icon, the script/applet counterpart of which is shown below, between the first on-line user (*e.g.*, the user visiting defendant's website) and the second on-line user (*e.g.*, customer support representative).

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▼<div class="eg-chat-altEngmt">
  ▼<div id="outer" style="width: 359px;">
    ▶<div class="queue-status" style="display: none;">...</div>
    ▼<div id="alt-engmt-panel">
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                <td style="width: 2px"></td>
                <!-- keypress event added for accessibility to fire onclick using ENTER when the element is in focus -->
                ▶<td onclick="App.utils.submitUrl('http://customer.egain.net/system/templates/selfservice/kiwi/index.html#/help/customer/locale/en-US/portal/40000000001000');" onkeypress="if(event.keyCode == 13) App.utils.submitUrl('http://customer.egain.net/system/templates/selfservice/kiwi/index.html#/help/customer/locale/en-US/portal/40000000001000');" bgcolor="#23C4BC">...</td>
              </td>
            </tbody>
          </tr>
        </tbody>
      </table>
    </div>
  </div>
</div>

```

(<https://www.cheapoair.com/customersupport/>).

25. 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 such Defendant’s infringement of the ‘599 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.

26. On information and belief, Defendant will continue its infringement of one or more claims of the '599 patent unless enjoined by the Court. Each and all of the Defendant's infringing conduct thus causes Plaintiff irreparable harm and will continue to cause such harm without the issuance of an injunction.

27. On information and belief, Defendant has had at least constructive notice of the '599 patent by operation of law, and there are no marking requirements that have not been complied with.

IV. 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.

V. 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 No. 6,434,599 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. 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;
- d. That Defendant be permanently enjoined from any further activity or conduct that infringes one or more claims of United States Patent No. 6,434,599; and

- e. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

May 11, 2018

Respectfully Submitted,

By: /s/David R. Bennett
Jean-Marc Zimmerman
Zimmerman Law Group
233 Watchung Fork
Westfield, New Jersey 07090
Tel: (908) 768-6408
Fax: (908) 935-0751
jmz@zimllp.com

David R. Bennett
Direction IP Law
P.O. Box 14184
Chicago, IL 60614-0184
(312) 291-1667
dbennett@directionip.com

Attorneys for Plaintiff Epic IP LLC

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was served on all parties who have appeared in this case on May 11, 2018, and who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/ David R. Bennett
David R. Bennett