**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF OHIO**

**LANDMARK TECHNOLOGY, LLC,**
329 Laurel St.
San Diego, CA 92101

Plaintiff,

v.

**Eloquii Design, Inc.,**
4449 Easton Way, Suite 2004
Columbus, OH 43215

Defendant.

C.A. No.

**TRIAL BY JURY DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

COMES NOW, Plaintiff Landmark Technology, LLC ("Landmark"), for its Complaint against Eloquii Design, Inc. ("Defendant" or "Eloquii"), alleges as follows:

## THE PARTIES

1. Plaintiff Landmark Technology, LLC ("Landmark") is a limited liability company organized under the laws of the State of Delaware with its principal place of business at 329 Laurel St., San Diego, CA 92101.

2. On information and belief, Eloquii Design, Inc. ("Eloquii") is a company organized under the laws of Delaware with a principal place of business located at 4449 Easton Way, Suite 2004, Columbus, OH 43215. Eloquii is further registered to do business in Ohio. Landmark is further informed and believes, and on that basis alleges, that Eloquii is in the business of selling apparel, and derives a significant portion of its revenue from sales and distribution via electronic transactions conducted on and using at least, but not limited to, the Internet website located at http://www.eloquii.com and/or the Eloquii functionality found at https://www.eloquii.com/on/demandware.store/Sites-eloquii-Site/default/Cart-Show, and

incorporated and/or related systems (collectively the "Eloquii Website"). Landmark is informed and believes, and on that basis alleges, that, at all times relevant hereto, Eloquii has done and continues to do business in this judicial district, including, but not limited to, providing products/services to customers located in this judicial district by way of the Eloquii Website and through its physical stores located in this district.

## JURISDICTION AND VENUE

3. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 *et seq*.

4. This Court has original and exclusive subject matter jurisdiction over the patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Eloquii because maintains its principal place of business in the state of Ohio. On information and belief, Eloquii has transacted and is continuing to transact business in this District that includes, but is not limited to, the use of products and systems that practice the subject matter claimed in the patents involved in this action.

6. Venue is proper in this district under 28 U.S.C. § 1400(b) because Eloquii is registered with the Secretary of State in the State of Ohio and thus resides in this district under the Supreme Court's opinion in *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017). Further, upon information and belief, Eloquii has committed acts of infringement in this district and a regular and established place of business in this district.

## FACTS

7. On September 11, 2001, United States Patent No. 6,289,319 entitled "Automated Business and Financial Transaction Processing System" was duly and legally issued to Lawrence B. Lockwood as inventor. A true and correct copy of United States Patent No. 6,289,319 is attached hereto as Exhibit A and incorporated herein by this reference.

8. Specifically, the ’319 Patent claims a novel automatic data processing system, including an interactive multimedia terminal capable of providing a video-based user interface while both dynamically sending and fetching remote information in order to fetch new inquiring sequences for the user.

9. By January 24, 1986—the date to which the ‘319 Patent claims priority—conventional “self-service terminals,” such as that disclosed in U.S. Pat. No. 4,359,631 (“the ‘631 Patent”), had “evolved to a high degree of sophistication.” Ex. A, 1:34-37. A true and correct copy of the ’631 Patent is attached as Exhibit B. In spite of their sophistication, however, conventional terminals of the day were nonetheless incapable of “the more complex types of goods and services distribution which requires a great deal of interaction between individuals and institutions.” Ex. A, 1:35-41. In particular, they were incapable of supporting an interactive video presentation while at the same time sending and fetching information to and from remote locations. Indeed, during prosecution of the ‘319 Patent, a three-judge panel of the Board of Patent Appeals and Interferences at the PTO found no suggestion of these higher-level functions being performed simultaneously in even the most sophisticated prior art terminal: “While [the prior art terminal of] Lockwood [‘631] may fetch additional inquiring sequences (as in presenting additional questions or options to a user) in response to a user input, we find no suggestion in [the prior art terminal of] Lockwood [‘631] of fetching the additional inquiring sequences in response to both user entry of data and to information received from the central processor,” as claimed in the ‘319 Patent. Thus, as the Board pointed out, prior art terminals did not use a “means for fetching additional inquiring sequences in response to a plurality of said data entered through said means for entering and in response to information received from said central processor” as that term is used in the ‘319 Patent. A true and correct copy of the Board’s decision is attached as Exhibit C. That term, among others, and in combination with other claim elements, not only distinguishes the ‘319 Patent from prior art systems, but constitutes one of its “inventive concepts,” rendering the patent eligible under 35 U.S.C. § 101. Yet another deficiency of the prior art terminals was that they did not have a “means for interactively

controlling the operation of said video screen, data receiving, and transmitting means; and for selectively retrieving said data from said means for storing," as that term is used in the '319 Patent. This, element, too, in combination with others, contains one of the '319 Patent's "inventive concepts." Attempting to perform these functions at the same time on the prior art terminals of the early-to-mid 1980's, such as that disclosed in the '631 Patent, would have resulted in the congestion of their systems, rendering them virtually inoperable. These technical limitations of the prior art terminals were recognized by persons of ordinary skill in the art, as evidenced by the declaration of Joey A. Maitra, an engineer with extensive experience in the relevant subject matter who held multiple positions in industry during the 1980's. A true and correct copy of the Maitra Declaration is attached as Exhibit D.

10. The structure employed by the prior art terminal of the '631 Patent had, by 1986, become conventional. That structure, and its technical limitations, are representative of terminals of the period. As shown in Figure 8 of the '631 Patent, the terminal "employs a bi-

**Figure 8 of Lockwood '631 – The Prior Art Terminal and its Single, Shared Information Handling Connection**

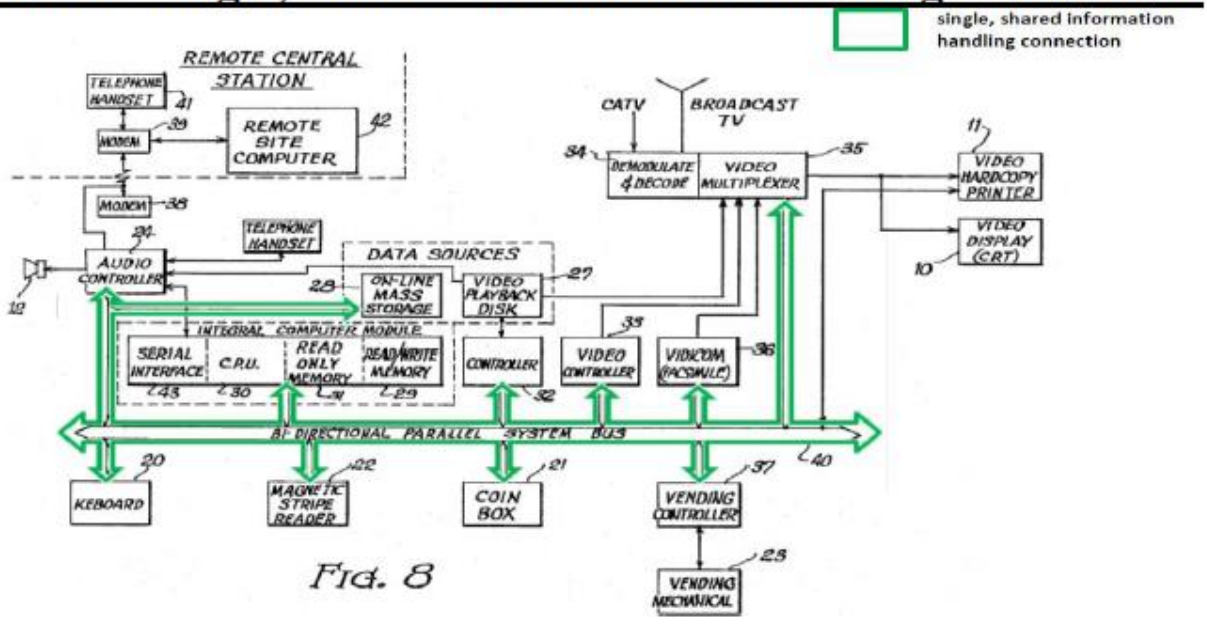


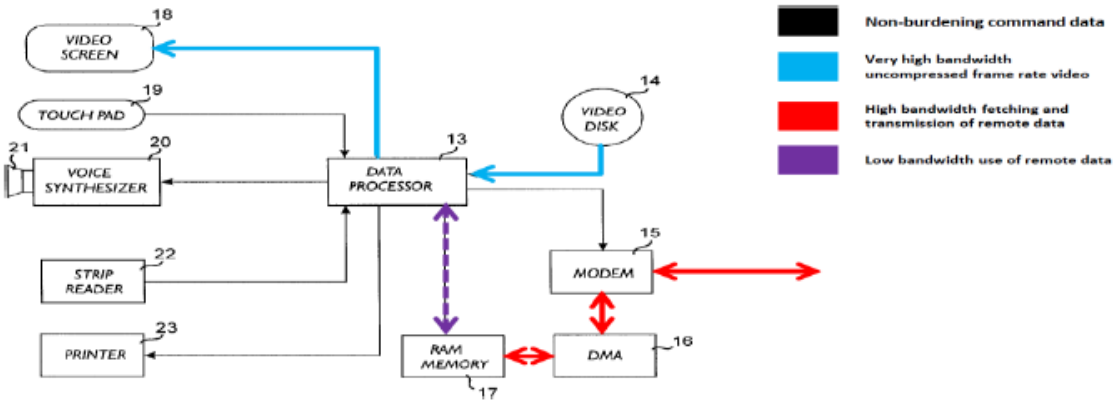

Fig. 8

directional parallel bus oriented input/output structure." Ex. B, 4:57-59 & Fig. 8. This information handling connection—bus 40—was *shared* among the terminal's systems. Ex. B,

4:62-64 (noting this "structure . . . accommodate[s] the various terminal components."). This structure presented a significant technical problem: in order to carry provide a higher degree of interactivity appropriate to the "more complex" transactions the '319 Patent sought to carry out, the terminal's video playback and communication systems would have been required to operate at the same time. However, persons of ordinary skill in the art recognized that this would have exhausted the data transfer capacity of conventional terminals. Ex. D [Maitra Decl.] ¶¶ 12, 14, 20.

11. To solve these issues, the '319 Patent introduced a novel hardware improvement in the claimed terminal. As demonstrated in Figure 2 of the '319 Patent, a DMA unit was

**'319 Patent, Figure 2 – Unconventional Arrangement of DMA Within a Second, Independent Information Handling Connection**




positioned independently along its own information handling connection within the terminal, unlike the systems of the prior art. Ex. A, Fig. 2. Whereas prior art terminals would have incorporated a DMA unit into a single information handling connection shared among their systems (such as that illustrated in Fig. 8 of the '631 Patent), the '319 Patent disclosed two independent information handling connections designed to prevent congestion resulting from concurrent operation of terminal systems. Ex. D [Maitra Decl.] ¶ 20. As the specification of the '319 Patent explains, the terminal's modem "handles a batch of information through a direct memory access [DMA] unit 16, to and from a RAM memory"—i.e., placing information directly

into memory along an independent information handling connection, and not, as in the prior art, by first traversing a shared connection already bogged down by other systems. Ex. A, 3:41-43; Ex. D [Maitra Decl.] ¶¶ 17-20. This unconventional hardware architecture enabled a higher level of interactivity and personalization of user transactions than was possible on conventional terminals in 1986, such as that disclosed in the '631 Patent. Persons of ordinary skill in the art would have recognized that the architecture of the terminal claimed in the '319 Patent overcame the technical limitations of conventional terminals, enabling the terminal to provide a richer interactive presentation to the user while simultaneously utilizing its communication systems to fetch necessary data from remote sources. Ex. D [Maitra Decl.] ¶ 14.

12. In an amendment filed on September 19, 1995, during prosecution of the '319 Patent, the inventor stressed that his claims "define a new set of interrelated apparatuses" and thus that "the claims do not merely recite the use of 'conventional hardware,'" but were directed to a "claimed new machine," not a method of doing business. As such, during prosecution the inventor specifically disclaimed a claim construction that "merely" covered "the use of conventional hardware" as of the time of invention, and narrowed his claims to require novel, non-obvious, and inventive concepts. Attached as Exhibit E is a true and correct copy of the September 19, 1995 amendment.

13. Following a reexamination of Patent No. 6,289,319, the United States Patent and Trademark Office issued an Ex Parte Reexamination Certificate, Number US 6,289,319 C1, on July 17, 2007, confirming the validity of all six (6) original claims and allowing twenty-two (22) additional claims. A true and correct copy of Ex Parte Reexamination Certificate, Number US 6,289,319 C1 is attached hereto as Exhibit F and incorporated herein by this reference.

14. Following a second reexamination of Patent No. 6,289,319, the United States Patent and Trademark Office issued an Ex Parte Reexamination Certificate, Number US 6,289,319 C2, on January 31, 2013, confirming the validity of all twenty eight (28) original claims. A true and correct copy of Ex Parte Reexamination Certificate, Number US 6,289,319 C2 is attached hereto as Exhibit F and incorporated herein by this reference (United States Patent

No. 6,289,319, together with the additional claims allowed by Ex Parte Reexamination Certificate, Number US 6,289,319 C1, and reaffirmed by Ex Parte Reexamination Certificate, Number US 6,289,319 C2 shall hereinafter be referred to as the "'319 Patent.")

15. On September 1, 2008, Lockwood licensed all rights in the '319 Patent to Landmark. Landmark is the exclusive licensee of the entire right, title and interest in and to the '319 Patent, including all rights to enforce the '319 Patent and to recover for infringement. The '319 Patent is valid and in force.

16. On or about January 26, 2018, Landmark sent Eloquii a letter informing Eloquii of the '319 Patent and that Eloquii's actions, as more fully described below, constituted infringement of the '319 Patent. Landmark sent a second letter on or about February 23, 2018.

17. As more fully laid out below, Eloquii has been and is now infringing the '319 Patent, in this judicial district and elsewhere, by providing its products/services using electronic transaction systems, which, individually or in combination, incorporate and/or use subject matter claimed by the '319 Patent.

## FIRST CLAIM FOR RELIEF

**(Direct Infringement of the '319 Patent, in Violation of 35 U.S.C. § 271(a))**

18. Landmark refers to and incorporates herein by reference paragraphs 1-17.

19. Eloquii has directly infringed, and continues to directly infringe, at least Claim 1 of the '319 Patent in this judicial district and elsewhere in the state of Ohio and the United States, through the sales and distribution via electronic transactions conducted on and using at least, but not limited to, the Eloquii Website.

20. The claims of the '319 Patent relate to "an automated data processing system for processing business and financial transactions between entities from remote sites" comprising a variety of features. Landmark has described these features generally below and attaches a claim chart for Claim 1 as Exhibit G.

21. The Eloquii functionality referenced above is "an automated data processing system for processing business and financial transactions between entities from remote sites" practicing the claims of the '319 Patent.

22. By way of example only, and without limitation, the Eloquii Website's functionality and supporting server infringes at least Claims 1 of the '319 Patent in that, the Eloquii Website's functionality and supporting server provide a system that, when accessed by a terminal, practices all of the limitations of the claims and on which Eloquii processes business information and places purchase orders, including:

a.) The Eloquii Website's functionality and supporting server, when accessed by a terminal, comprise an automatic data processing system for processing business and financial transactions between entities from remote sites running the Eloquii Website's functionality.

b.) The Eloquii Website system includes a central processor (the server and its supporting systems) programmed and connected to process a variety of inquiries and orders transmitted from Eloquii's functionality running at said remote sites. Eloquii's system allows for a broad range of transactions, thus a range of orders are possible. The system processes a "variety of inquiries and orders," such as inquiries regarding order history and order status, and the placement of orders for products.

c.) The system is operated through a terminal (e.g., the Eloquii computer(s) at each of said remote sites), which terminal includes a data processor and operates in response to operational sequencing lists of program instructions (the code constituting the transaction systems). That terminal includes a DMA positioned independently on its own information handling connection, or its equivalent.

d.) The system fetches additional inquiring sequences in response to a plurality of data entered through a keyboard and in response to information received from the central processor. For example, the "Sign-In" section of the Eloquii Website fetches additional

inquiring sequences relating to erroneous or empty data fields, depending on the user's entry and information received from the central processor.

e.) The server for the Eloquii Website and Eloquii's computerized station(s), together with software, practice all of the remaining limitations of Claim 1 of the '319 Patent. Eloquii's Website, functionality and server, and incorporated and/or related systems, put the invention into service.

23. Eloquii's Website exerts control over the transactions placed via the claimed terminal. On information and belief, when the terminal's browser accesses Eloquii's Website, Eloquii's server causes the browser to place a "cookie" on the claimed terminal, which allows users to store items in the website's shopping cart.

24. Eloquii, on information and belief, is also engaged in internal use of the claimed system, by developing and testing versions of its Website on its own computers. For example, Eloquii employs a "Chief Technology Officer," in charge of "all Tech Operations" for the company, including "Development & Research" for its Website. *See* https://www.linkedin.com/in/shahzad-umar-33499b4. Eloquii is also actively engaged in hiring a "Lead Ecommerce Developer" to "[a]ctively participate in tech design for complex high-performance service-oriented architectures" related to its Website. *See* https://angel.co/eloquii-design/jobs/327800-lead-ecomm-developer. Eloquii, therefore, by the acts complained of herein, is making, using, selling, or offering for sale in the United States, including in this District, products and/or services embodying the invention, and has in the past and is now continuing to infringe the '319 Patent, either literally or under the doctrine of equivalents, in violation of 35 U.S.C. § 271(a).

25. Eloquii threatens to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Landmark's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford Landmark adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be

required. Landmark does not have an adequate remedy at law to compensate it for the injuries threatened.

26. By reason of the acts of Eloquii alleged herein, Landmark has suffered damage in an amount to be proved at trial.

27. Landmark is informed and believes, and on that basis alleges, that the infringement by Eloquii is willful, wanton, and deliberate, without license and with full knowledge of the '319 Patent, thereby making this an exceptional case entitling Landmark to attorneys' fees and enhanced damages.

**SECOND CLAIM FOR RELIEF**

**(Inducing Infringement of the '319 Patent, in Violation of 35 U.S.C. § 271(b))**

28. Landmark refers to and incorporates herein by reference paragraphs 1-27.

29. Landmark is informed and believes, and on that basis alleges, that Eloquii has actively and knowingly induced infringement of the '319 Patent, in violation of 35 U.S.C. § 271(b) by, among other things, inducing its customers to utilize their own device in combination the Eloquii Website, and incorporated and/or related systems, to search for and order information and products from the Eloquii Website in such a way as to infringe the '319 Patent.

30. For example, Eloquii is inducing its customers to infringe by encouraging them to create new accounts and to sign in to their accounts using their login information to retrieve their customer information.

31. By reason of the acts of Eloquii alleged herein, Landmark has suffered damage in an amount to be proved at trial.

32. Eloquii threatens to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to Landmark's irreparable injury. Landmark does not have an adequate remedy at law.

33. Landmark is informed and believes, and on that basis alleges, that the infringement by Eloquii is willful, wanton, and deliberate, without license and with full

knowledge of the ’319 Patent, thereby making this an exceptional case entitling Landmark to attorneys’ fees and enhanced damages.

**PRAYER FOR RELIEF**

WHEREFORE, Landmark prays for relief as follows:

A. Judgment that Eloquii has directly infringed, and induced others to infringe, the ’319 Patent either literally and/or under the doctrine of equivalents;

B. Judgment that Eloquii’s infringement of the ’319 Patent has been willful;

C. Judgment permanently enjoining Eloquii, its officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, and all others acting in concert or privity with any of them, from infringing the ’319 Patent, and from inducing others to infringe the ’319 Patent;

D. Judgment awarding Landmark general and/or specific damages, including a reasonable royalty and/or lost profits, in amounts to be fixed by the Court in accordance with proof, including enhanced and/or exemplary damages, as appropriate, as well as all of Eloquii’s profits or gains of any kind from its acts of patent infringement;

E. Judgment awarding Landmark enhanced damages pursuant to 35 U.S.C. § 284 due to the willful and wanton nature of Eloquii’s infringement;

F. Judgment awarding Landmark all of its costs, including its attorneys’ fees, incurred in prosecuting this action, including, without limitation, pursuant to 35 U.S.C. § 285 and other applicable law;

G. Judgment awarding Landmark pre-judgment and post-judgment interest; and

H. Judgment awarding Landmark such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Pursuant to Federal Rule of Civil Procedure 38(b), Landmark hereby demands a trial by jury on all issues triable to a jury.

Dated: July 27, 2018

Respectfully submitted,

/s/ Howard L. Wernow
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