

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

S3G TECHNOLOGY LLC,

Plaintiff,

v.

PESTRUTES LLC,

Defendant.

Case No. 6:18-cv-595

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff S3G Technology LLC (“S3G”) alleges as follows for its complaint against Defendant PestRoutes LLC (“PestRoutes”):

JURISDICTION AND VENUE

1. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§ 1 et seq.
2. This Court has original and exclusive subject matter jurisdiction over patent infringement claims for relief under 28 U.S.C. §§ 1331 and 1338(a).
3. The Court has specific and general personal jurisdiction over PestRoutes pursuant to due process and/or the Texas Long Arm Statute, due at least to PestRoutes’ substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this district.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1400(b). For example, PestRoutes has a regular and established place of business at 4500 W. Eldorado Parkway, Suite 3200, McKinney, Texas 75070.

PARTIES

5. S3G is a limited liability company organized under the laws of the State of California with its principal place of business in Foster City, California.

6. S3G is informed and believes, and on that basis alleges, that PestRoutes is a Texas corporation with its corporate headquarters and principal place of business at 4500 W. Eldorado Parkway, Suite 3200, McKinney, Texas 75070. S3G is further informed and believes, and on that basis alleges, that PestRoutes derives a significant portion of its revenue from the promotion and/or sale of its products and services, and supporting system(s), server(s), and software, including at least its application for devices running the Android operating system, other PestRoutes applications for smartphones, and its other supporting server(s) (“Accused Instrumentalities”).

7. S3G is informed and believes, and on that basis alleges, that, at all times relevant hereto, PestRoutes has conducted and continues to conduct business, including the manufacture, use, distribution, promotion, and/or the offer for sale and sale of its products and services in this Judicial District.

PATENTS

8. United States Patent No. 8,572,571 (the “571 patent”) entitled “Modification of Terminal and Service Provider Machines Using an Update Server Machine” was duly and legally issued on October 29, 2013. A true and correct copy of the ‘571 patent is attached hereto as Exhibit “A” and incorporated herein by this reference. By a series of assignments, S3G is now

the assignee of the entire right, title and interest in and to the '571 patent, including all rights to enforce the '571 patent and to recover for infringement. The '571 patent is valid and in force.

9. United States Patent No. 9,081,897 (the "'897 patent'") entitled "Modification of Terminal and Service Provider Machines Using an Update Server Machine" was duly and legally issued on July 14, 2015. A true and correct copy of the '897 patent is attached hereto as Exhibit "B" and incorporated herein by this reference. By assignment, S3G is now the assignee of the entire right, title and interest in and to the '897 patent, including all rights to enforce the '897 patent and to recover for infringement. The '897 patent is valid and in force.

10. United States Patent No. 9,304,758 (the "'758 patent'") entitled "Modification of Terminal and Service Provider Machines Using an Update Server Machine" was duly and legally issued on April 5, 2016. A true and correct copy of the '758 patent is attached hereto as Exhibit "C" and incorporated herein by this reference. S3G is the assignee of the entire right, title and interest in and to the '758 patent, including all rights to enforce the '758 patent and to recover for infringement. The '758 patent is valid and in force.

11. United States Patent No. 9,940,124 (the "'124 patent'") entitled "Modification of Terminal and Service Provider Machines Using an Update Server Machine" was duly and legally issued on April 10, 2018. A true and correct copy of the '124 patent is attached hereto as Exhibit "D" and incorporated herein by this reference. S3G is the owner of the entire right, title and interest in and to the '124 patent, including all rights to enforce the '124 patent and to recover for infringement. The '124 patent is valid and in force.

FIRST CLAIM FOR RELIEF

Infringement of the '571 patent

12. S3G refers to and incorporates herein by reference paragraphs 1-11.

13. PestRoutes, by the acts complained of herein, and by making, using, selling, offering for sale, and/or importing in the United States, including in the Eastern District of Texas, instrumentalities embodying the invention, has in the past, does now, and continues to infringe the '571 patent directly, contributorily and/or by inducement, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

14. At least since the filing of this complaint, PestRoutes has had actual knowledge of the '571 patent.

15. On information and belief, PestRoutes has directly infringed one or more claims of the '571 patent by making, using, importing, supplying, selling, or offering for sale the Accused Instrumentalities. By doing so, PestRoutes has directly infringed at least claim 2 of the '571 patent as set forth in Exhibit E, attached hereto.

16. On information and belief, PestRoutes has knowingly and actively induced the infringement of one or more of the '571 patent claims by, *inter alia*, marketing, promoting, and offering for use the Accused Instrumentalities, knowingly and intending that the use of such instrumentalities by PestRoutes customers and by users infringes the '571 patent. For example, PestRoutes intends to induce such infringement by, among other things, promoting users to download and run its mobile applications, including at least applications for devices running the Android operating system, knowing that the use of the its applications on a user's portable device or smart phone in connection with supporting systems such as its server(s) infringes one or more claims of the '571 patent.

17. On information and belief, PestRoutes has contributed to the infringement of the '571 patent by, *inter alia*, marketing and promoting products and services. Defendant has used and promoted within the United States the Accused Instrumentalities, which are not staple

articles or commodities of commerce suitable for substantial non-infringing use, and are known by PestRoutes to be especially made or especially adapted to the infringe the '571 patent. As a result, PestRoutes's Accused Instrumentalities have been used by its customers and by users to infringe the '571 patent. PestRoutes continues to engage in acts of contributory infringement of the '571 patent.

18. By reason of the acts of PestRoutes alleged herein, S3G has suffered damage in an amount to be proved at trial.

19. PestRoutes threatens to continue to engage in the acts complained of herein and, unless restrained and enjoined, will continue to do so, all to S3G's irreparable injury. It would be difficult to ascertain the amount of compensation that would afford S3G adequate relief for such future and continuing acts, and a multiplicity of judicial proceedings would be required. S3G does not have an adequate remedy at law to compensate it for the injuries threatened.

SECOND CLAIM FOR RELIEF

Infringement of the '897 patent

20. S3G refers to and incorporates herein by reference paragraphs 1-19.

21. PestRoutes, by the acts complained of herein, and by making, using, selling, offering for sale, and/or importing in the United States, including in the Eastern District of Texas, instrumentalities embodying the invention, has in the past, does now, and continues to infringe the '897 patent directly, contributorily and/or by inducement, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

22. At least since the filing of this complaint, PestRoutes has had actual knowledge of the '897 patent.

23. On information and belief, PestRoutes has directly infringed one or more claims of the '897 patent by making, using, importing, supplying, selling, or offering for sale the Accused Instrumentalities. By doing so, PestRoutes has directly infringed at least claim 1 of the '897 patent as set forth in Exhibit F, attached hereto.

24. On information and belief, PestRoutes has knowingly and actively induced the infringement of one or more of the '897 patent claims by, *inter alia*, marketing, promoting, and offering for use the Accused Instrumentalities, knowingly and intending that the use of such instrumentalities by PestRoutes customers and by users infringes the '897 patent. For example, PestRoutes intends to induce such infringement by, among other things, promoting users to download and run its mobile applications, including at least applications for devices running the Android operating system, knowing that the use of the its applications on a user's portable device or smart phone in connection with supporting systems such as its server(s) infringes one or more claims of the '897 patent.

25. On information and belief, PestRoutes has contributed to the infringement of the '897 patent by, *inter alia*, marketing and promoting products and services. Defendant has used and promoted within the United States the Accused Instrumentalities, which are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by PestRoutes to be especially made or especially adapted to the infringe the '897 patent. As a result, PestRoutes's Accused Instrumentalities have been used by its customers and by users to infringe the '897 patent. PestRoutes continues to engage in acts of contributory infringement of the '897 patent.

THIRD CLAIM FOR RELIEF

Infringement of the '758 patent

26. S3G refers to and incorporates herein by reference paragraphs 1-25.

27. PestRoutes, by the acts complained of herein, and by making, using, selling, offering for sale, and/or importing in the United States, including in the Eastern District of Texas, instrumentalities embodying the invention, has in the past, does now, and continues to infringe the '758 patent contributorily and/or by inducement, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

28. At least since the filing of this complaint, PestRoutes has had actual knowledge of the '758 patent.

29. On information and belief, PestRoutes has directly infringed one or more claims of the '758 patent by making, using, importing, supplying, selling, or offering for sale the Accused Instrumentalities. By doing so, PestRoutes has directly infringed at least claim 1 of the '758 patent as set forth in Exhibit G, attached hereto.

30. On information and belief, PestRoutes has knowingly and actively induced the infringement of one or more of the '758 patent claims by, *inter alia*, marketing, promoting, and offering for use the Accused Instrumentalities, knowingly and intending that the use of such instrumentalities by PestRoutes customers and by users infringes the '758 patent. For example, PestRoutes intends to induce such infringement by, among other things, promoting users to download and run its mobile applications, including at least applications for devices running the Android operating system, knowing that the use of the its applications on a user's portable device or smart phone in connection with supporting systems such as its server(s) infringes one or more claims of the '758 patent.

31. On information and belief, PestRoutes has contributed to the infringement of the '758 patent by, *inter alia*, marketing and promoting products and services. Defendant has used and promoted within the United States the Accused Instrumentalities, which are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by PestRoutes to be especially made or especially adapted to the infringe the '758 patent. As a result, PestRoutes's Accused Instrumentalities have been used by its customers and by users to infringe the '758 patent. PestRoutes continues to engage in acts of contributory infringement of the '758 patent.

FOURTH CLAIM FOR RELIEF

Infringement of the '124 patent

32. S3G refers to and incorporates herein by reference paragraphs 1-31.

33. PestRoutes, by the acts complained of herein, and by making, using, selling, offering for sale, and/or importing in the United States, including in the Eastern District of Texas, instrumentalities embodying the invention, has in the past, does now, and continues to infringe the '124 patent contributorily and/or by inducement, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271.

34. At least since the filing of this complaint, PestRoutes has had actual knowledge of the '124 patent.

35. On information and belief, PestRoutes has directly infringed one or more claims of the '124 patent by making, using, importing, supplying, selling, or offering for sale the Accused Instrumentalities. By doing so, PestRoutes has directly infringed at least claim 1 of the '124 patent as set forth in Exhibit H, attached hereto.

36. On information and belief, PestRoutes has knowingly and actively induced the infringement of one or more of the '124 patent claims by, *inter alia*, marketing, promoting, and offering for use the Accused Instrumentalities, knowingly and intending that the use of such instrumentalities by PestRoutes customers and by users infringes the '124 patent. For example, PestRoutes intends to induce such infringement by, among other things, promoting users to download and run its mobile applications, including at least applications for devices running the Android operating system, knowing that the use of the its applications on a user's portable device or smart phone in connection with supporting systems such as its server(s) infringes one or more claims of the '124 patent.

37. On information and belief, PestRoutes has contributed to the infringement of the '124 patent by, *inter alia*, marketing and promoting products and services. Defendant has used and promoted within the United States the Accused Instrumentalities, which are not staple articles or commodities of commerce suitable for substantial non-infringing use, and are known by PestRoutes to be especially made or especially adapted to the infringe the '124 patent. As a result, PestRoutes's Accused Instrumentalities have been used by its customers and by users to infringe the '124 patent. PestRoutes continues to engage in acts of contributory infringement of the '124 patent.

JURY DEMAND

38. S3G demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, S3G prays for relief as follows:

A. For an order finding that the '897, '571, '758, and '124 patents are valid and enforceable;

B. For an order finding that PestRoutes has infringed the '897, '571, '758, and '124 patents directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;

C. For an order finding that PestRoutes' infringement is willful;

D. For an order temporarily, preliminarily and permanently enjoining PestRoutes, its officers, directors, agents, servants, affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, privies, and all others acting in concert or participation with any of them, from infringing the '897, '571, '758, and '124 patents directly, contributorily and/or by inducement, in violation of 35 U.S.C. § 271;

E. For an order directing PestRoutes to file with the Court, and serve upon S3G's counsel, within thirty (30) days after entry of the order of injunction, a report setting forth the manner and form in which it has complied with the injunction;

F. For an order awarding S3G general and/or specific damages adequate to compensate S3G for the infringement by PestRoutes, 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 the profits or gains of any kind made by PestRoutes from its acts of patent infringement;

G. For an order awarding S3G pre-judgment interest and post-judgment interest at the maximum rate allowed by law;

H. For an order requiring an accounting of the damages to which S3G is found to be entitled;

I. For an order declaring this to be an exceptional case pursuant to 35 U.S.C. § 285 and awarding S3G its attorneys' fees;

J. For an order awarding S3G its costs of court; and

K. For an order awarding S3G such other and further relief as the Court deems just and proper.

DATED: November 14, 2018

Respectfully Submitted,

By: /s/ Charles Ainsworth_____

Charles Ainsworth
State Bar No. 00783521
Robert Christopher Bunt
State Bar No. 00787165
PARKER, BUNT & AINSWORTH, P.C.
100 E. Ferguson, Suite 1114
Tyler, TX 75702
903/531-3535
903/533-9687
E-mail: charley@pbatyler.com
E-mail: rcbunt@pbatyler.com