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

IDB VENTURES LLC	§	
	§	
Plaintiff,	§	
	§	
v.	§	
CHARLOTTE RUSSE HOLDINGS, INC.	§	Case No. 2:17-cv-00660-WCB-RSP
	§	LEAD CASE
	§	
AMERICAN EAGLE OUTFITTERS INC.	§	Case No. 2:17-cv-00658-WCB-RSP
	§	
	§	
THE BUCKLE, INC.	§	Case No. 2:17-cv-00659-WCB-RSP
	§	
	§	
DSW INC.	§	Case No. 2:17-cv-00523-WCB-RSP
	§	
	§	
ACADEMY, LTD.	§	Case No. 2:17-cv-00524-WCB-RSP
	§	
Defendants.	§	

THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

As a result of the Court's Claim Construction Order on October 31, 2018 (Dkt. No. 97)

Plaintiff IDB Ventures, LLC ("Plaintiff") files this Third Amended Complaint against

Academy, Ltd. ("Defendant") alleging as follows:

PARTIES

1.   Plaintiff IDB Ventures, LLC is a limited liability company organized under the

state of Texas having a principal place of business at 5068 W. Plano Pkwy., Suite 300, Plano,

Texas 75093.

2.   Upon information and belief Defendant is a corporation with a principal place of business located at 1800 N. Mason Road, Katy, Texas 77449. Defendant has been served and has made an appearance herein.

JURISDICTION AND VENUE

3.   This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271(a), 281, and 284 - 85. This Court has subject matter jurisdiction over this action under 28 U.S.C. §1331 and §1338(a).

4.   Venue is proper in this district under 28 U.S.C. §§1400(b). On information and belief, Defendant has transacted business in this district, has committed acts of patent infringement in this district and has at least one regular place of business in this district, *e.g.,* 8668 S. Broadway Ave., Tyler, Texas 75703.

5.   Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its 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 judicial district.

COUNT I
(INFRINGEMENT OF U.S. PATENT NO. 6,216,139)

6.   On April 10, 2001, United States Patent No. 6,216,139 (the "'139 Patent") was duly and legally issued by the United States Patent and Trademark Office for an invention titled "Integrated Dialog Box for Rapidly Altering Presentation of Parameter Text Data Objects on a Computer Display." A true and correct copy of the '139 Patent is attached hereto as Exhibit A.

7.   Mr. Robert Listou is listed as the inventor of the '139 Patent.

8.   Plaintiff is the owner by assignment of the '139 Patent with all rights in and to the '139 Patent.

9.   The inventions claimed in the '139 Patent pertain to unconventional activity whereby a dialog box displays a list of parameters and prompts a user to construct a sort order from that list of parameters. When prompted, the user may select values for each parameter in the spaces provided, enter a parameter not currently displayed, or the computer system may pre-select a default set of parameters such as an "All" selection or a null selection for user acceptance. Further, the user is prompted to construct a sort order or the computer system constructs the sort order, such as a default sort order, for user acceptance. The computer system then selects the text data objects satisfying the values assigned to the displayed parameters, sorts the selected text data objects according to the constructed sort order, and displays the sorted text data objects. This simplified, interactive means of displaying records or text data objects overcomes problems in the prior art that made achieving the same displaying cumbersome or require specialized training or a user manual.

10.   Defendant directly or through intermediaries, makes, uses, imports, sells, and/or offers for sale products and/or systems (i.e. www.academy.com, the "Accused Instrumentality") that infringe claims 1, 2, and 19 of the '139 Patent.

11.   Upon information and belief, Defendant has been and is now infringing at least claims 1, 2, and 19 of the '139 Patent in the State of Texas, in this Judicial District, and elsewhere in the United States, by, among other things, directly or through intermediaries, making, using, importing, selling and/or offering for sale products or services through www.academy.com in a manner covered by one or more claims of the '139 Patent to the injury of Plaintiff. Defendant is thus infringing, literally infringing, and/or infringing the '139 Patent

under the doctrine of equivalents. Defendant is thus liable for infringement of the '139 Patent

pursuant to 35 U.S.C. §. 271.

12.   Upon information and belief, to the extent any marking was required by 35 U.S.C.

§ 287, predecessors in interest to the '139 Patent complied with such requirements.

13.   In violation of 35 U.S.C. § 271, Defendant is now, and has been directly

infringing claims 1, 2, and 19 of the '139 Patent by making and using the Accused

Instrumentality, at least during internal testing, that performs all the steps required by the

methods recited in claims 1 and 2, and includes all the elements of claim 19 of the '139 Patent.

Defendant, including Defendant's users at least during internal testing, has used the Accused

Instrumentality to perform the methods of claims 1 and 2, and has at least made and used all the

elements of claim 19 of the '139 Patent.   For example, Defendant made the Accused

Instrumentality, i.e., its website located at the www.academy.com domain name, and utilized

users, as a non-limiting example, employees of Defendant who acted on behalf of Defendant,

over which Defendant exercised direction or control by an employer-employee relationship to

perform all the steps of claim 1. Hence, Defendant has directly infringed claim 1 of the '139

Patent.

14.   In further violation of 35 U.S.C. § 271, Defendant is now, and has been directly

infringing claims 1, 2, and 19 of the '139 Patent by making and using the Accused

Instrumentality, in conjunction with third-party users, including customers of Defendant, that

performs all the steps required by the method recited in claims 1, 2, and 19 of the '139 Patent.

For example, Defendant provides the Accused Instrumentality and exercises direction or control

over third-party users, including customers of Defendant, when third-party users, including

customers of Defendant, performs at least some of the steps of claims 1, 2, and 19, as further

described below. For example, Defendant conditions third-party users' use of its website, i.e., the Accused Instrumentality on third-party users agreeing to the Defendant's Terms and Conditions of Website Use (the "Terms and Conditions"). On information and belief, the Terms and Conditions specify the manner in which third-party users can and cannot use the Accused Instrumentality, namely, third-party users cannot modify the Accused Instrumentality to function in any manner other than that dictated by Defendant, including to function in a non-infringing manner with respect to the '139 Patent. Therefore, Defendant directs or controls third-party users' use of the Accused Instrumentality, including performing at least some of the steps and/or functional limitations of claims 1, 2, and 19 of the '139 Patent as further described below.

15.   As recited in claim 1, the Accused Instrumentality and includes, at least, imaging on a display device controlled by the computer system, a query dialog box, i.e., a defined area displayed on a monitor that allows for user input related to the text data objects and is distinct from the defined area for displaying the text data objects. For example, the Accused Instrumentality controls a display device, *e.g.,* a monitor or display, to display an image of a query dialog box, *e.g.,* it displays a search menu adjacent to and distinct from the search results.

16.   Further, the query dialog box (red rectangle), a defined area displayed on a monitor that allows for user input related to the text data objects (blue rectangle and green rectangle) and is distinct from the defined area for displaying the text data objects (outlined in gray by the Accused Instrumentality and highlighted herein in a yellow rectangle).
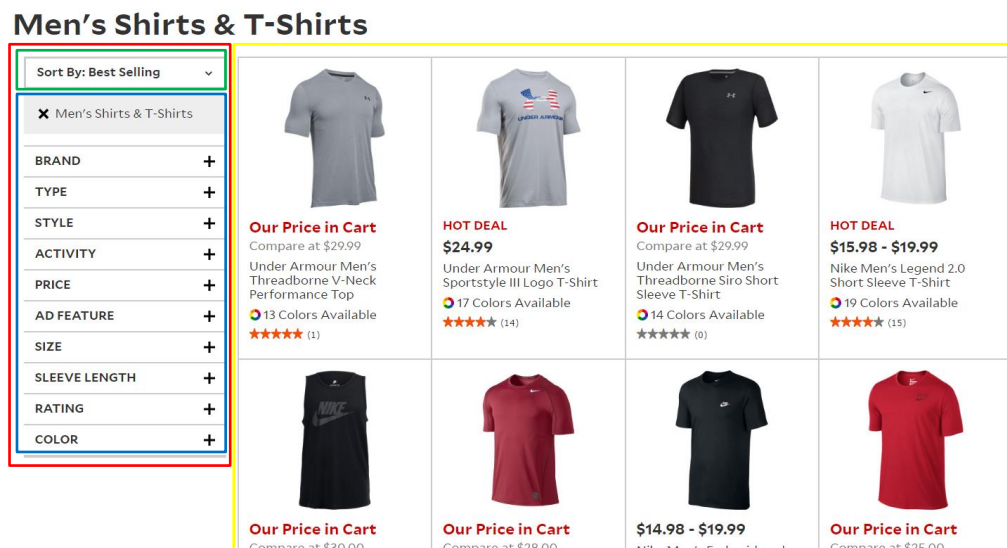
17.   The Accused Instrumentality also provides a query dialog box (red rectangle above) which displays each of a plurality of parameters associated with each of the text data object, forms a plurality of spaces for listing values with each displayed parameter and further forms a space for selecting sort order. For example, the Accused Instrumentality provides a query dialog box, *e.g.,* a menu, which displays each of a plurality of parameters associated with each of the text data objects, *e.g.,* brand, type, price, etc., and forms a plurality of spaces for listing values with each displayed parameter, *e.g.,* each parameter has its own drop-down menu (blue rectangle shown above). *See also* Ex. B, Figs. 1-5.

18.   The Accused Instrumentality further forms a space for selecting a sort order, *e.g.,* sort by: best-selling, brand, price (green rectangle shown above). *See also* Ex. B, Figs. 1-5.

19.   A user, either Defendant's user or a third-party user, uses the Accused Instrumentality to designate, for each displayed parameter a parameter value. For example, a user

uses the Accused Instrumentality to assign a value, or accept a default value, for each displayed parameter, *e.g.,* each item is assigned to a brand, type, style, price, or a default value, which is accepted by the user, etc., using the Accused Instrumentality highlighted by at least the green rectangle above. *See also* Ex. B, Figs. 1-5.

20.   Further, the user uses the Accused Instrumentality to construct a sort order from the displayed parameters in the space for selecting a sort order. For example, the user specifies a sort order from one or more of the parameters displayed in the space for selecting a sort order, or using the sort order initially displayed, *e.g.,* the user specifies a sort order from one or more parameters in the list of available parameters, such as newest, best selling, brand, price, etc., or uses the sort order initially displayed, as shown at least in the pull-down menu labeled "Sort by" and highlighted by the green rectangle above. *See also* Ex. B, Figs. 1-5.

21.   The Accused Instrumentality also selects, using a computer system, text data objects satisfying the designated values.   For example, the Accused Instrumentality selects, using the computer system, text objects satisfying the designated values, *e.g.,* it selects objects which match the search parameters, such as shirts, with the appropriate brand, price, color, size, etc. designated by the user, either affirmatively or accepted by the user as a default value. *See also* Ex. B, Figs. 1-5.

22.   The Accused Instrumentality also sorts, using the computer system the selected text data objects according to the constructed sort order.   For example, the Accused Instrumentality sorts, using the computer system, the selected text data objects according to the constructed sort order, *e.g.*, the selected items are sorted according to the sort order, either specified by the user or using the sort order initially displayed. *See also* Ex. B, Figs. 1-5.

23.   The Accused Instrumentality infringes claim 2 of the '139 Patent, wherein it images on the display device a list of sorted text data objects. For example, the Accused Instrumentality displays a list of sorted text data objects, *e.g.*, it displays a list of the matching items in the sorted order (indicated at least by the yellow rectangle above). *See also* Ex. B, Figs. 1-5.

24.   The Accused Instrumentality infringes claim 19 of the '139 Patent, wherein it includes a computer memory storage device encoded with a computer program for using a computer system to sort and display text data objects. For example, the Accused Instrumentality includes a computer program for sorting and displaying text data objects stored on computer memory, *e.g.*, a hard drive.

25.   The Accused Instrumentality also includes a means for imaging, on a display device controlled by the computer system, a query dialog box. For example, the Accused Instrumentality includes a means for imaging, on a display device controlled by the computer system, a query dialog box, *e.g.*, the Accused Instrumentality includes a display device of a Defendant user or a third-party user, such as a monitor, cathode ray tube, or liquid crystal display, controlled by the computer system, or structural equivalents thereof that images the query dialog box (red rectangle below).
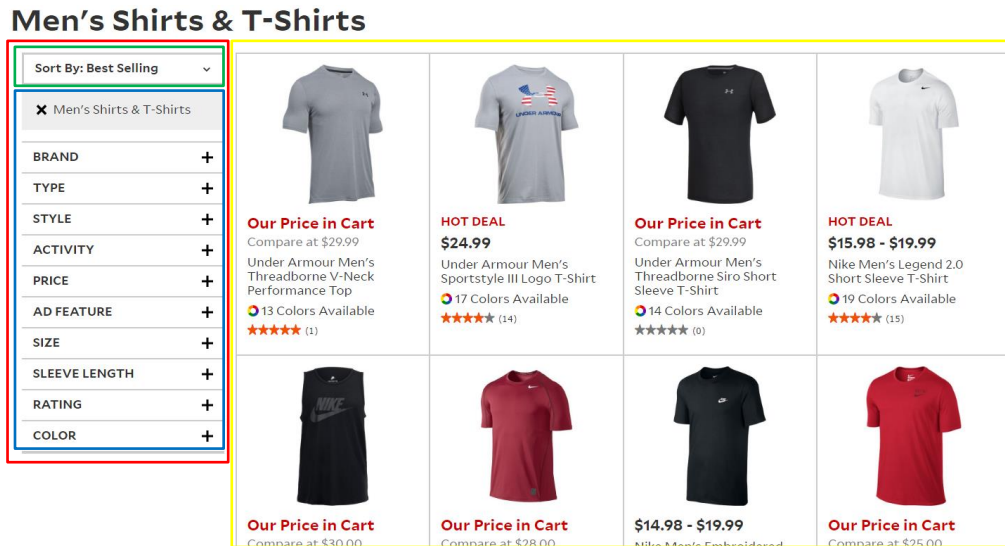
26.   The Accused Instrumentality also includes software for displaying a query dialog box that displays each of a plurality of parameters associated with each of the text data objects, forms a plurality of spaces for listing values associated with each displayed parameter, and further forms a space for selecting a sort order. For example, the Accused Instrumentality includes software for displaying query box, *e.g.*, a menu, that displays each of a plurality of parameters associated with each of the text data objects, *e.g.*, brand, type, style, price, etc., and forms a plurality of spaces for listing values associated with each displayed parameter, *e.g.*, each parameter has its own menu (blue rectangle shown above). *See also* Ex. B, Figs. 1-5.

27.   The Accused Instrumentality further forms a space for selecting a sort order, *e.g.*, sort by: featured, brand, price (green rectangle shown above). *See also* Ex. B, Figs. 1-5.

28.   The Accused Instrumentality also includes a means for designating, for each displayed parameter, a parameter value.   For example, the Accused Instrumentality includes a means for designating, for each displayed parameter, a parameter value, *e.g.*, it includes software modules which receive input from a cursor control device or an alphanumeric input device, and structural equivalents thereof for user to assign a value, or accept a default value, for each

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displayed parameter, i.e., to assign each item to a brand, type, style, price, etc. (blue rectangle shown above). *See also* Ex. B, Figs. 1-5.

29. The Accused Instrumentality also includes a means for constructing sort order from the displayed parameters in the space for selecting a sort order.   For example, the Accused Instrumentality includes a means for constructing a sort order from the displayed parameters in the space for selecting sort order, *e.g.,* software modules that receive input from a cursor control device or an alphanumeric input device, and structural equivalents thereof to construct a sort order from the list of available parameters such as featured, newest, best selling, brand, price, etc. (green rectangle shown above). *See also* Ex. B, Figs. 1-5.

30. The Accused Instrumentality also includes a means for selecting, using the computer system, text data objects satisfying the designated values. For example, the Accused Instrumentality includes a means for selecting, using the computer system, text data objects satisfying the designated values, *e.g.*, it includes software modules which select objects that match the search parameters, such as brand, type, style, price, etc. *See also* Ex. B, Figs. 1-5.

31. The Accused Instrumentality also includes a means for sorting, using the computer system, the selected text data objects according to the constructed sort order. For example, the Accused Instrumentality includes a means for sorting, using the computer system, the selected text data objects according to the constructed sort order, *e.g.,* it includes software modules which sort the selected items according to the sort order. *See also* Ex. B, Figs. 1-5.

32. On information and belief, Defendant has infringed the '139 Patent by inducing others, including at least users, each of Defendant's users and third party users, of the Accused Instrumentality, through its advertising, publications, instructions, manuals, terms of service,

and/or technical support to infringe claims 1, 2, and 19 of the '139 Patent in violation of 35 U.S.C. § 271(b). *See, e.g.*, Ex. B.

33.   On information and belief, Defendant took active steps to induce infringement of claims 1, 2, and 19 of the '139 Patent by others, including Defendant's users and/or customers, authorized resellers, distributors, and users of the Accused Instrumentality, and Defendant took such active steps knowing that those steps would induce, encourage, and facilitate direct infringement by others.   Such active steps included, but are not limited to, encouraging, advertising (including by internet websites, television, store displays, etc.), promoting, and instructing others to use and/or how to use at least the Accused Instrumentality. *See id.*

34.   On information and belief, Defendant knew or should have known that such activities would induce others to directly infringe claims 1, 2, and 19 of the '139 Patent, including for example, by encouraging them to use and/or how to use at least the Accused Instrumentality.

35.   Defendant undertook infringing actions despite knowing that such activities infringed the '139 Patent, which has been duly issued by the USPTO, and is presumed valid. For example, since at least July 6, 2017, Defendant has been aware that its actions constituted and continue to constitute infringement of the '139 Patent, and that the '139 Patent is valid. Despite its knowledge that its actions constitute infringement, Defendant continued its infringing activities in a willful, wanton, malicious, bad-faith, deliberate, consciously wrongful or flagrant manner, which is an egregious case of culpable behavior. As such, Defendant willfully infringed the '139 Patent.

36.   As a result of the Defendant's infringement of the '139 Patent, Plaintiff has

suffered monetary damages in an amount not yet determined, and will continue to suffer

damages in the future unless Defendant's infringing activities are enjoined by this Court.

37.   Unless a permanent injunction is issued enjoining Defendant and its agents,

servants, employees, attorneys, representatives, affiliates, and all others acting on their behalf

from infringing the '139 Patent, Plaintiff will be irreparably harmed.

EXCEPTIONAL CASE

38.   Plaintiff restates and re-alleges each of the allegations set forth herein and

incorporates them herein.

39.   This is an exceptional case warranting an award of attorney's fees to Plaintiff

under 35 U.S.C. § 285.

40.   Defendant has willfully and deliberately infringed, induced others to infringe,

and/or contributed to the infringement of the Patents-in-suit with full knowledge and wanton

disregard of Plaintiff's rights thereunder, rendering this an "exceptional" case within the

meaning of 35 U.S.C. § 285.

41.   Plaintiff has incurred attorneys' fees, costs, and expenses in the prosecution of

this action. Pursuant to 35 U.S.C. § 285, Plaintiff is entitled to recover its reasonable and

necessary fees and expenses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter:

1.   A judgment in favor of Plaintiff that Defendant has infringed the '139 Patent;

2.   A permanent injunction enjoining Defendant and its officers, directors, agents,

servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting

inactive concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '139 Patent, or such other equitable relief the Court determines is warranted;

3. A judgment and order requiring Defendant pay to Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '139 Patent as provided under 35 U.S.C. § 284, and an accounting of ongoing post-judgment infringement;

4. A judgment that this case is exceptional;

5. That this Court award Plaintiff increased damages in an amount not less than three times the amount of damages found by the jury or assessed by this Court, for Defendant's willful infringement pursuant to 35 U.S.C. § 285;

6. Any and all other relief, at law or equity, to which Plaintiff may show itself to be entitled.

DEMAND FOR JURY TRIAL

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

Dated: November 15, 2018   Respectfully submitted,

/s/ Katarzyna Brozynski
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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that all known counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per E. Dist. Tex. Loc. Ct. R. CV-5(a)(3) on this the 15th day of November 2018.

/s/ Katarzyna Brozynski
Katarzyna Brozynski

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