

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

LONE STAR TARGETED ADVERTISING, LLC,

Plaintiff,

v.

POINT IT!, INC.,

Defendant.

Civil Action No. 2:19-cv-00154

FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT

JURY DEMAND

Plaintiff Lone Star Targeted Advertising, LLC (“LSTA”), for its Complaint against Point It!, Inc. (“Defendant” or “Point It”), alleges as follows:

PARTIES

1. Plaintiff Lone Star Targeted Advertising, LLC (“LSTA”) is a limited liability company organized under the laws of the State of Texas with its principal place of business in Dallas, Texas.

2. On information and belief, Point It!, Inc. is a company organized under the laws of Washington with an office at 500 E. Pike Street, Suite 200A, Seattle, Washington 98122-3886.

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.*

1 (b) receiving and storing said viewer attribute information by an electronic device, included
2 with an in communication with a television belonging to the view, said viewer attribute
information input into said electronic device by the viewer;

3 (c) providing sender requested electronic information of the sender to be transmitted by
4 request of the sender to the viewer, said sender requested electronic information of the
5 sender is included with a non-viewer provided subset of said viewer attribute information
related to the viewer;

6 (d) providing a service center for communicating to a television station provider of the
7 transmitted video signals encoding instructions to form encoded sender requested
electronic information of the sender;

8 (e) transmitting a compound video signal including said non-viewer provided subset of
9 viewer attribute information and said encoded sender requested electronic information of
the sender by said television station provider of the transmitted video signals to said
10 electronic device included with and in communication with said television belonging to the
viewer;

11 (f) making a decision selected from the group consisting of accepting said encoded sender
12 requested electronic information of the sender and not accepting said encoded sender
requested electronic information of the sender by said electronic device included with and
13 in communication with said television belonging to the viewer, whereby said decision by
said electronic device accepting said encoded sender requested electronic information the
14 sender is made by recognizing said non-viewer provided subset of said viewer attribute
information;

15 (g) decoding said encoded sender requested electronic information of the sender by said
16 electronic device included with and in communication with said television belonging to the
viewer to form decoded sender requested electronic information of the sender;

17 (h) formatting said decoded sender requested electronic information of the sender by said
18 electronic device included with and in communication with said television belonging to the
viewer to form formatted decoded sender requested electronic information of the sender;

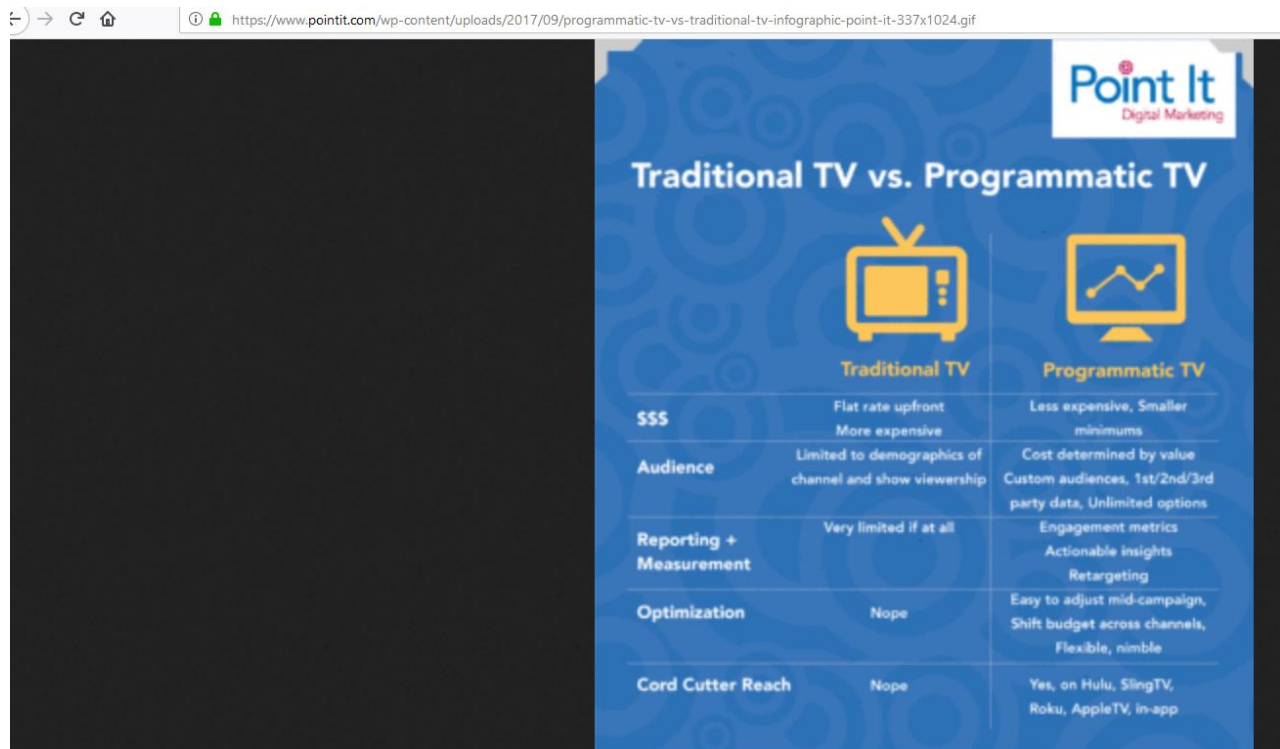
19 (i) opening up of a subwindow within said television belonging to the viewer; and

20 (j) displaying said formatted decoder sender requested electronic information of the sender
21 within said subwindow within said television belonging to the viewer.

22 On information and belief, Point It infringes claim 9 of the '619 Patent. Specifically, Point
23 It addresses “[a] golden opportunity to get your messaging in front of targeted audiences on their
24 terms — wherever and whenever they are streaming — and the ability to make adjustments in real-
25 time based on market behavior.” See <https://www.pointit.com/services/connected-tv-advertising/>.

26 9. Point It infringes each element of Claim 9 as follows:
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28

a. “providing viewer attributable information related to the viewer” – Point It provides viewer attributed information related to the viewer, it utilizes viewer attribute information via advance audience analytics, in particular: “Target your buyer, not an entire household. We can use geographic, audience, and device parameters for highly-specific, highly-effective purchases.” See <https://www.pointit.com/services/connected-tv-advertising/>.



	Traditional TV	Programmatic TV
\$\$\$	Flat rate upfront More expensive	Less expensive, Smaller minimums
Audience	Limited to demographics of channel and show viewership	Cost determined by value Custom audiences, 1st/2nd/3rd party data, Unlimited options
Reporting + Measurement	Very limited if at all	Engagement metrics Actionable insights Retargeting
Optimization	Nope	Easy to adjust mid-campaign, Shift budget across channels, Flexible, nimble
Cord Cutter Reach	Nope	Yes, on Hulu, SlingTV, Roku, AppleTV, in-app

“1st/2nd/3rd party” audience/viewer data used for targeting, per the infographic. See <https://www.pointit.com/resource-library/programmatic-tv-ads-vs-traditional-tv-ads/>

1 b. “receiving and storing said viewer attribute information by an
2 electronic device included with an in communication with a television belonging to the viewer, said
3 viewer attribute information input into said electronic device by the viewer” – In order for Point It
4 to utilize its platform and analytical system, an electronic device of the viewer’s is in
5 communication with a TV in order to obtain “real-time” audience data and insights. For most
6 viewers, this will be the Set Top Box that provides the real-time analytics information to the
7 “sender”. Point It receives viewer attribute information from an electronic device in order to “get
8 [customer] messaging in front of targeted audiences on their terms — wherever and whenever they
9 are streaming — and the ability to make adjustments in real-time based on market behavior.” *See*
10 <https://www.pointit.com/services/connected-tv-advertising/>

11 Point It discusses several different programmatic TV options including devices and viewer
12 attribute collection and provides several examples of Programmatic TV devices per the graphic:

- 13 • “Connected TV: TV advertising that’s delivered through a device that’s
14 connected to the internet through over-the-top (OTT) like xyz or Smart TV
15 apps.”
- 16 • “Addressable TV: TV advertising that’s delivered with set-top boxes like xyz
17 using data you collect yourself (first party data) or data purchased from other
18 sources (third party data). Addressable TV is about the person, not the
19 program.”
- 20 • “OTT: This is referring to over-the-top devices or smart TVs that are connected
21 to the internet.

22 *See* <https://www.pointit.com/blog/programmatic-tv-missed-opportunity-brands/>

23 c. “providing sender requested electronic information of the sender to
24 be transmitted by request of the sender to the viewer, said sender requested electronic information
25 of the sender is included with a non-viewer provided subset of said viewer attribute information
26 related to the viewer” -- On information and belief, Point It directs targeted ads to viewers.

1 Targeted advertisement based on the campaign being run using Point It's services meet this
2 requirement, as the sender is requesting the sending of information from sender to viewer based on
3 viewer attributable information. Sender content is sent to the viewer.

4 In this video, Point It indicates that CTV is skyrocketing, with 64% of consumers owning a
5 CTV device. It discusses using data to target certain households to be sure CTV ads will drive
6 brand interest and awareness to the right audience. <https://vimeo.com/273541925>

7 d. "providing a service center for communicating to a television station
8 provider of the transmitted video signals encoding instructions to form encoded sender requested
9 electronic information of the sender" -- Point It's platform is the service center that interfaces in
10 providing information of advertiser, content provider, and the viewer. For example: Point It's
11 customer service center "leverages self-service capabilities across all programmatic platforms to
12 continuously optimize your campaign against your business objectives and marketing goals.",
13 utilizing "geographic, audience, and device parameters" to communicate targeted viewer attributes
14 for said campaign to connected TV devices, such as "Roku, Apple TV, or Google Chromecast."
15 See <https://www.pointit.com/services/programmatic-advertising/> and
16 <https://www.pointit.com/services/connected-tv-advertising/>

17 e. "transmitting a compound video signal including said non-viewer
18 provided subset of viewer attribute information and said encoded sender requested electronic
19 information of the sender by said television station provider of the transmitted video signals to said
20 electronic device included with and in communication with said television belonging to the
21 viewer." -- This element is met as Point It transmits and sends encoded information, *e.g.* video to
22 viewers including non-viewer provided information in order to deliver ads targeted to the viewer,
23 especially in regard to the Point It platform's ability to "Target your buyer, not an entire
24 household." Point It holds itself up as an expert and leader in CTV advertising and delivery to
25 smart TV devices by "...hosting an exclusive event with Hulu and The Trade Desk to educate
26 advertisers in the Seattle area about Connected TV (CTV) advertising" and stating "Video
27 streaming has created an opportunity for advertisers to reach audiences in an efficient, targeted
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1 manner through smart TV devices and apps.” See [https://www.pointit.com/blog/seattle-event-](https://www.pointit.com/blog/seattle-event-reaching-cord-cutters-connected-tv-advertising/)
2 [reaching-cord-cutters-connected-tv-advertising/](https://www.pointit.com/blog/seattle-event-reaching-cord-cutters-connected-tv-advertising/).





3 f. “making a decision selected from the group consisting of accepting
4 said encoded sender requested electronic information of the sender and not accepting said encoded
5 sender requested electronic information of the sender by said electronic device included with and
6 in communication with said television belonging to the viewer, whereby said decision by said
7 electronic device accepting said encoded sender requested electronic information the sender is
8 made by recognizing said non-viewer provided subset of said viewer attribute information” – On
9 information and belief, inherently, the only logical next step for said device is to determine
10 whether to accept (for purposes of viewing/displaying) said sender requested electronic
11 information based on whether the transmitted subset of viewer attribute information matches
12 viewer attribute information on the device. The device determines whether a given transmission is
13 intended for it by checking if the transmission is tagged with attributes matching its own local
14 attributes. Per the standard process of OTT ad insertion: “Playback devices will read the top level
15 manifest and learn the available profiles. **They will then decide on a profile, read its individual**
16 **manifest and start reading decoding the segments.** If the network conditions change, the
17 playback device may switch to a higher or lower profile as needed. On a live stream, manifests are
18 frequently updated.” [https://www.tvtechnology.com/opinions/scte10435-and-beyond-a-look-at-](https://www.tvtechnology.com/opinions/scte10435-and-beyond-a-look-at-ad-insertion-in-an-ott-world)
19 [ad-insertion-in-an-ott-world](https://www.tvtechnology.com/opinions/scte10435-and-beyond-a-look-at-ad-insertion-in-an-ott-world).

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Digital Marketing

Benefits of Connected TV

Unlike traditional TV advertising, CTV advertising offers the ability to target audiences at a much more sophisticated scale, and to purchase TV ads within one second. Benefits include:

			
Target your buyer, not an entire household.	Measure performance, not publisher-side metrics.	Respond to market behaviors in real-time.	Follow the conversions with refined attribution.
We can use geographic, audience, and device parameters for highly-specific, highly-effective purchases.	Track the number of seconds someone watched a video ad, then show them a banner ad later on their phone if they watched the whole thing.	Purchase ads within one second; make immediate adjustments to your audience or message and monitor the results to optimize performance.	Leverage deterministic data to prove — not just assume — that someone who saw your TV ad later came on to your site with their laptop and purchased an item.

g. “decoding said encoded sender requested electronic information of the sender by said electronic device included with and in communication with said television belonging to the viewer to form decoded sender requested electronic information of the sender” — On information and belief, encoded information is decoded in order for the information to be displayed to the viewer.

h. “formatting said decoded sender requested electronic information of the sender by said electronic device included with and in communication with said television belonging to the viewer to form formatted decoded sender requested electronic information of the sender” — On information and belief, decoded information is formatted in an appropriate manner consistent with the display requirements of the television with which it is in communication.

i. “opening up of a subwindow within said television belonging to the viewer” — A television screen displays content. Within the television, on information and belief, there are other windows, such as when choosing the menu which pops up. At least for example, when dynamic brand insertion is utilized.

j. “and, displaying said formatted decoder sender requested electronic information of the sender within said subwindow within said television belonging to the viewer” -- On information and belief, after accepting, decoding, and formatting sender requested electronic information, the electronic device necessarily displays said sender requested electronic information.

10. On January 8, 2019, LSTA sent a letter to Point It informing Point It of the '619 Patent and that Point It's actions constituted infringement of the '619 Patent.

FIRST CLAIM FOR RELIEF

Patent Infringement of the '619 Patent (35 U.S.C. §§ 101, et seq.)

(Against all Defendants)

11. LSTA refers to and incorporates herein by reference paragraphs 1-10.

13. Defendant infringed, either directly or indirectly, at least Claim 9 of the '619 Patent in this judicial district and elsewhere in Washington and the United States, through the services they provide as outlined at www.pointit.com and as described above.

14. Defendant, therefore, by the acts complained of herein, is making, using, selling, or offering for sale in the United States, including in the Western District of Washington, products and/or services embodying the invention, and have in the past and are now continuing to infringe the '619 Patent, either literally or under the doctrine of equivalents, pursuant to 35 U.S.C. §271(a).

15. To the extent that some elements of claim 9 are performed by a different party than Point It, Point It participates in the infringement (as described above) and receives a benefit upon performance of the steps of the patented method. For example, Point It provides the software and technology that establishes viewer attribute information related to the viewer that can be collected, and how that information is transmitted, received, stored and acted upon in accordance with the patented method. Point It receives a benefit from such actions by the customer and television station provider as it allows targeted advertising to be displayed through the top set box.

16. Upon information and belief, the acts described above concerning the use, offer for sale, sale, operation, distribution, and/or installation of Point It's products and/or software and

1 those described below also constitute acts of induced and contributory infringement. Customers
2 and users use the infringing products and software to provide targeted ads.

3 17. To the extent that some elements of a claim are performed by a different party than
4 Point It, Point It, through its software and infringing products, participates in the infringement (as
5 described herein) and receives a benefit upon performance of steps of a patented method. For
6 example, Point It provides the software and technology that establishes viewer attribute
7 information related to the viewer that can be collected, and how that information is transmitted,
8 received, stored and acted upon in accordance with the patented method. Point It receives a
9 benefit from such actions by the customer and television station provider as it allows targeted
10 advertising to be displayed.

11 18. Upon information and belief, Point It provides its customers and/or users of its
12 products and software to use, load and operate in an infringing manner or to create and use
13 infringing products. Upon information and belief, Point It further induces its customers and/or
14 users of Point It's platform to use its products (and accompanying software) by providing
15 subscriptions to Point It's platform. Further, Point It has actively induced infringement by its
16 customers and/or users of Point It's products and software in this judicial district. Upon
17 information and belief, Point It knowingly and specifically designed Point It's platform in a
18 manner that infringed the Asserted Patent. Upon information that belief, Point It also provides
19 support services claim 9 of the '619 Patent. Point It's targeted advertising method has no
20 substantial non-infringing use. Point It has acted with specific intent to induce or cause
21 infringement and to conduct acts of infringement as described herein within the jurisdiction and
22 elsewhere. Upon information and belief, Point It continues to provide instructions since having
23 notice and actual knowledge of the '619 Patent.

24 19. Upon information and belief, Point It has had knowledge of the '619 Patent at least
25 as early as January 8, 2019, when LSTA's counsel sent a letter to Point It. Notwithstanding, Point
26 It continues to willfully and with specific intent infringe and cause others to infringe the '619
27 Patent. Point It provides, makes, sells, and offers to sell Point It products with the specific intent
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1 that its customers, third parties, and/or end users use the Point It products in an infringing manner,
2 and its customers, third parties, and/or end users do so. Upon information and belief, Point It
3 provides and instructs third parties to use the aforementioned product in the manner claimed in the
4 '619 Patent.

5 20. Upon information and belief, Point It's platform has no substantial non-infringing
6 uses and is especially made and/or adapted so as to infringe the '619 Patent. Point It has acted
7 with specific intent to induce or cause infringement and to conduct acts of infringement as
8 described herein within this District and elsewhere. Point It continues to contribute to the
9 infringement of third parties even after having notice and actual knowledge of the '619 Patent as
10 previously described.

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

16 22. By reason of the acts of Point It alleged herein, LSTA has suffered damage in an
17 amount to be proved at trial.

18 **JURY DEMAND**

19 LSTA demands a jury trial on all issues so triable.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, LSTA prays for relief as follows:

22 A. Judgment that Defendant has directly infringed, and induced others to infringe, the
23 '619 Patent either literally and/or under the doctrine of equivalents;

24 B. Judgment that Defendant's infringement of the '619 Patent have been willful at
25 least as early as the filing of this Complaint;

26 C. Judgment permanently enjoining Defendant, its officers, directors, agents, servants,
27 affiliates, employees, subsidiaries, divisions, branches, parents, attorneys, representatives, and all
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others acting in concert or privity with any of them, from infringing the '619 Patent, and from inducing others to infringe the '619 Patent;

D. Judgment awarding LSTA 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 Defendant's profits or gains of any kind from their acts of patent infringement;

E. Judgment awarding LSTA enhanced damages pursuant to 35 U.S.C. § 284 due to the willful and wanton nature of Defendant's infringement from at least January 8, 2019 when notice was given;

F. Judgment awarding LSTA 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 LSTA pre-judgment and post-judgment interest; and

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

Dated: March 4, 2019

Respectfully submitted,

BANIE & ISHIMOTO LLP

By: /s/ John A. Lee, WSBA No. 35,550

John A. Lee
jlee@banishlaw.com
 Banie & Ishimoto LLP
 3705 Haven Ave., #137
 Menlo Park, CA 94025
 T: 650.241.2774
 F: 650.241.2770

Attorneys for Plaintiff
 Landmark Technology, LLC