

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DATREC, LLC,)	
)	
Plaintiff,)	
)	Civil Action No. 4:20-cv-2833
v.)	
)	
GENE BY GENE, LTD.,)	
)	JURY TRIAL DEMANDED
Defendant.)	

PLAINTIFF’S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

DatRec, LLC (“DatRec”) files this First Amended Complaint and demand for jury trial seeking relief from patent infringement of the claims of U.S. Patent No. 8,381,309 (“the ‘309 patent”) (“Patent-in-Suit”) by Gene by Gene, Ltd. (“Gene”). The only amendment to this complaint was to add the patent as an exhibit. No other changes were made.

I. THE PARTIES

1. Plaintiff DatRec is a Texas Limited Liability Company with its principal place of business located in Harris County, Texas.
2. On information and belief, Gene by Gene, Ltd. is Limited Partnership organized and existing under the laws of Texas, with a principal place of business located 1445 North Loop West, Suite 820, Houston, Texas 77008. On information and belief, Gene sells and offers to sell products and services throughout Texas, including in this judicial district, and introduces products and services that perform infringing methods or processes into the stream of commerce knowing that they would be sold in Texas and this judicial district. Gene has accepted service and will answer by October 19, 2020.

II. JURISDICTION AND VENUE

3. This Court has original subject-matter jurisdiction over the entire action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claim arises under an Act of Congress relating to patents, namely, 35 U.S.C. § 271.

4. This Court also has original subject-matter jurisdiction over the entire action pursuant to 28 U.S.C. § 1332(a)(1) because Plaintiff is a limited liability company organized under the laws of the State of Texas and Defendant is a Texas Limited Partnership with a principal, physical place of business at 1445 North Loop West, Suite 820, Houston, Texas 77008. The matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

5. This Court has personal jurisdiction over Defendant because: (i) Defendant is present within or has minimum contacts within the State of Texas and this judicial district; (ii) Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in this judicial district; and (iii) Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in this judicial district.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b). Defendant has committed acts of infringement and has a regular and established place of business in this District. Further, venue is proper because Defendant conducts substantial business in this forum, directly or through intermediaries, 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 this District.

III. INFRINGEMENT - Infringement of the '309 Patent

7. On February 9, 2013, U.S. Patent No. 8,381,309 (“the ’309 patent”, attached as Exhibit B) entitled “Methods and systems for secure communication over a public network” was duly and legally issued by the U.S. Patent and Trademark Office. DatRec, LLC owns the ’309 patent by assignment.

8. The ’309 patent relates to a novel and improved system for secure communication over a public network.

9. Gene maintains, operates, and administers a website at www.familytreedna.com that infringes one or more claims of the ’309 patent, including one or more of claims 1-17, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the ’309 Patent into service (i.e., used them); but for Defendant’s actions, the claimed-invention’s embodiments involving Defendant’s products and services would never have been put into service. Defendant’s acts complained of herein caused those claimed-invention’s embodiments as a whole to perform, and Defendant’s procurement of monetary and commercial benefit from it.

10. Support for the allegations of infringement may be found in the following preliminary table:

US8381309 B2

Family Tree DNA (Gene by Gene)

A system for enabling communication between users over a communication network, the system comprising;

FamilyTreeDNA DNA TESTS UPLOAD DNA DATA SHOP

SIGN IN HELP

Explore your ancestry with Family Finder

Start your journey by discovering your origins and making family connections.

ONLY \$79 USD ORDER NOW

2018 Gene by Gene, Ltd.

<https://www.familytreedna.com/products/family-finder>

Family Tree DNA (Gene by Gene) has a system for enabling communication between users over a communication network.

The reference includes subject matter disclosed by the claims of the patent after the priority date.

US8381309 B2

Family Tree DNA (Gene by Gene)

<p>a server system associated with a database comprising verified data relating an individual, said server system being configured and operable to verify at least some of the data so as to authenticate an identity of the individual;</p>	<p>REFINE YOUR MATCHES</p> <h2>Experience Enhanced Results</h2> <p>Another robust tool within Family Finder is our exclusive family matching system which enables users to view, sort and compare DNA matches by parental lines.</p> <p><u>This substantial feature allows you to identify your confirmed maternal and paternal DNA matches in the world's most comprehensive DNA matching database.</u></p> <p>https://www.familytreedna.com/products/family-finder</p> <p>The reference describes a server system associated with a database comprising verified data relating an individual, said server system being configured and operable to verify at least some of the data so as to authenticate an identity of the individual [This substantial feature allows you to identify your confirmed maternal and paternal DNA matches in the world's most comprehensive DNA matching database].</p>
<p>US8381309 B2</p>	<p>Family Tree DNA (Gene by Gene)</p>

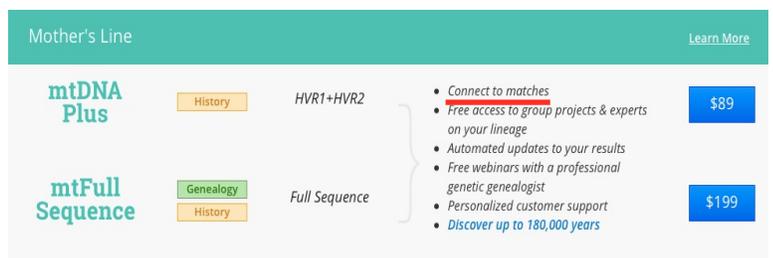
determining a level of reliability in authenticity based on correspondence between data on said individual entered by a plurality of related individuals; and

Name	Match Date	Relationship Range	Shared Centimorgans	Longest Block	X-Match	Linked Relationship	Ancestral Surnames
Sean James Mailloux	11/12/2017	Father/Son	3,384	267	X-Match	Father	Guidry (Louisiana) / Dubois (Mississippi)
Ava Mailloux	08/06/2017	Mother/Daughter	3,379	267	X-Match	Mother	Charlet (Louisiana) / Breux (France)
Mary Alice Fontenot	03/02/2018	Full Sister, Half Sister, Grandmother/ Granddaughter	2,272	207		Grandmother	Broussard/Shieh/ Guidry/Dubois
Paul D. Martin	01/16/2018	2nd Cousin - 4th Cousin	81	34			Boudreaux (Louisiana, Mississippi, Alabama)
Sinclair Johnson	10/22/2016	2nd Cousin - 4th Cousin	60	60	X-Match		LeBlanc (Louisiana) / Berdeien (Louisiana)

<<https://www.familytreedna.com/products/family-finder>>

The reference describes determining a level of reliability in authenticity based on correspondence between data on said individual entered by a plurality of related individuals.

the system being configured to define one or more levels of permitted communication between individuals in the database and the verified individual on the basis of said verification.



<https://www.familytreedna.com/products>

The reference describes the system being configured to define one or more levels of permitted communication between individuals in the database and the verified individual on the basis of said verification [Connect to matches].

These allegations of infringement are preliminary and are therefore subject to change.

11. Gene has and continues to induce infringement. Gene has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., question and answer services on the Internet) and related services that provide question and answer services across the Internet such as to cause infringement of one or more of claims 1–17 of the '309 patent, literally or under the doctrine of equivalents. Moreover, Gene has known of the '309 patent and the technology underlying it from at least the date of issuance of the patent.

12. Gene has and continues to contributorily infringe. Gene has actively encouraged or instructed others (e.g., its customers and/or the customers of its related companies), and continues to do so, on how to use its products and services (e.g., question and answer services on the Internet) and related services that provide question and answer services across the

Internet such as to cause infringement of one or more of claims 1–17 of the '309 patent, literally or under the doctrine of equivalents. Moreover, Gene has known of the '309 patent and the technology underlying it from at least the date of issuance of the patent.

13. Gene has caused and will continue to cause DatRec damage by direct and indirect infringement of (including inducing infringement of) the claims of the '309 patent.

IV. JURY DEMAND

DatRec hereby requests a trial by jury on issues so triable by right.

V. PRAYER FOR RELIEF

WHEREFORE, DatRec prays for relief as follows:

- a. enter judgment that Defendant has infringed the claims of the '309 patent through familytreedna.com, or a website linked thereto;
- b. award DatRec damages in an amount sufficient to compensate it for Defendant's infringement of the '309 patent, in an amount no less than a reasonable royalty or lost profits, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;
- c. award DatRec an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;
- d. declare this case to be "exceptional" under 35 U.S.C. § 285 and award DatRec its attorneys' fees, expenses, and costs incurred in this action;
- e. declare Defendant's infringement to be willful and treble the damages, including attorneys' fees, expenses, and costs incurred in this action and an increase in the damage award pursuant to 35 U.S.C. § 284;

- f. a decree addressing future infringement that either (i) awards a permanent injunction enjoining Defendant and its agents, servants, employees, affiliates, divisions, and subsidiaries, and those in association with Defendant from infringing the claims of the Patents-in-Suit, or (ii) awards damages for future infringement in lieu of an injunction in an amount consistent with the fact that for future infringement the Defendant will be an adjudicated infringer of a valid patent, and trebles that amount in view of the fact that the future infringement will be willful as a matter of law; and
- g. award DatRec such other and further relief as this Court deems just and proper.

Respectfully submitted,

Ramey & Schwaller, LLP

/s/William P. Ramey

William P. Ramey, III

Texas Bar No. 24027643

SDTX Bar No. 27206

5020 Montrose Blvd., Suite 800

Houston, Texas 77006

(713) 426-3923 (telephone)

(832) 900-4941 (fax)

wramey@rameyfirm.com

Attorneys for DatRec, LLC

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that all counsel of record who have appeared in this case are being served on this day of September 17, 2020, with a copy of the foregoing Court's CM/ECF system.

/s/ William P. Ramey, III
William P. Ramey, III