IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

BRIGHTPLANET CORPORATION II, INC., Plaintiff, v. **IBM CORPORATION,** Defendant.	Civil Action No.: **TRIAL BY JURY DEMANDED**

COMPLAINT FOR INFRINGEMENT OF PATENT

Now comes Plaintiff, Brightplanet Corporation II, Inc. ("Plaintiff" or "Brightplanet"), by and through undersigned counsel, and respectfully alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code ("U.S.C.") to prevent and enjoin Defendant IBM Corporation (hereinafter "Defendant"), from infringing and profiting, in an illegal and unauthorized manner, and without authorization and/or consent from Plaintiff from U.S. Patent No. 6,741,979 ("the '979 Patent" or the "Patent-in-Suit"), which is attached hereto as Exhibit A and incorporated herein by reference, and pursuant to 35 U.S.C. §271, and to recover damages, attorney's fees, and costs.

THE PARTIES

2. Plaintiff is a corporation organized under the laws of South Dakota, with its principal place of business at 600 S. Main Ave. Suite 102, Sioux Falls, SD 57104.

3. Upon information and belief, Defendant is a corporation organized under the laws of Delaware, having a principal place of business at 1 New Orchard Road, Armonk, New York 10504. Upon information and belief, Defendant may be served with process c/o Global Corporate Services, Inc., 704 North King Street – Suite 500, Wilmington, Delaware 19899.

4. Upon information and belief, Defendant physically resides in this judicial District via its offices at 1111 Superior Ave., Cleveland, Ohio.

JURISDICTION AND VENUE

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

6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

7. This Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction and its residence in this District, as well as because of the injury to Plaintiff, and the cause of action Plaintiff has risen in this District, as alleged herein.

8. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; (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 this forum state and in this judicial District; and (iii) having a physical presence in this District.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b) because Defendant resides in this District under the Supreme Court's opinion in *TC Heartland v. Kraft Foods Group Brands LLC,* 137 S. Ct. 1514 (2017) through its regular and established place of business in this District.

FACTUAL ALLEGATIONS

10. On May 25, 2004, the United States Patent and Trademark Office ("USPTO") duly and legally issued the '979 Patent, entitled "SYSTEM AND METHOD FOR FLEXIBLE

INDEXING OF DOCUMENT CONTENT" after a full and fair examination. The '979 Patent is attached hereto as Exhibit A and incorporated herein as if fully rewritten.

11. Plaintiff is presently the owner of the '979 Patent, having received all right, title and interest in and to the '979 Patent from the previous assignee of record. Plaintiff possesses all rights of recovery under the '979 Patent, including the exclusive right to recover for past infringement.

12. To the extent required, Plaintiff has complied with all marking requirements under 35 U.S.C. § 287.

13. As identified in the '979 Patent, prior art systems had technological faults. See Ex. A at Col 1:31-55.

14. More particularly, the '979 Patent identifies that the prior art provided systems that utilized lexicographic (digital) search trees. "A radix search tree is a digital search tree with a fixed alphabet size. Each edge in the trie represents a character in the alphabet. Each internal node represents a string prefix. Each external node represents a string. The tree records the minimal prefix set of characters required to differentiate all strings in the set. Strings are found by following an access path defined by the string's characteristics. Trie variations have developed into three broad categories: array based tries, where arrays of pointers are used to access subtrees; binary search trees based tries, where a binary tree is used to traverse the trie; and list based tries, where linked lists provide access linkage." Ex. A at Col. 1:32-44.

15. Further, "[a]rray lookup can be relatively fast, but is typically limited to small alphabet sizes, since large-sized alphabets have too many null pointers. Binary search trees are relatively compact, but each bit must be examined, so binary search trees are relatively slower than

arrays. Linked lists are relatively more storage efficient than arrays, but have relatively slower access times than arrays." Ex. A at Col.1:44-51.

16. However, this caused specific problems. Namely, a problem with the above-described prior art solution is indexing storage efficiency and speed. "When extremely large numbers of strings are to be indexed, storage efficiency relatively greater than an array trie, and relatively faster access than a linked list trie or binary search trie is desirable". Ex. A at Col.1:51-54.

17. To address this specific technical problem and the disadvantages inherent in the prior art, the '979 Patent comprises a non-abstract method, and system for flexible indexing of document content wherein the same can be utilized for facilitating the rapid search and retrieval of large collections of documents. Ex. A at Col. 1:56-63.

18. In further addressing this specific technical problem identified in the Background section, the '979 Patent comprises a non-abstract method and system for obtaining a collection of documents to be indexed, storing said collection documents in a single document information stream, parsing each one of said documents into constituent words to facilitate indexing, creating a plurality of stem words to be indexed by stemming each word into a standard prefix, and indexing each stem word. Ex. A at Col.1:65-Col.2:4.

19. The '979 Patent identified that these features were advantageous to improve the ability to index large amounts of document content for purposes of rapid search and retrieval of large collections of documents, that were previously a computer centric problem or phenomenon. Ex. A at Col.1: 27-30.

20. Particularly, Claim 18 of the '979 Patent states:

> "18.
> A system for flexible indexing of document

> content comprising:
> a computer system having a storage means for facilitating the retention and recall of a collection of documents to be indexed;
> an indexing module for developing character-by-character index of words;
> a plurality of records providing character-by-character addressing for said indexing module;
> a plurality of streams for recording locations where each indexed word occurs in said collection of documents;
> wherein said plurality of records further comprises:
> a first record providing an entry point into said index, said first record comprising a plurality of entries, each one of said entries being uniquely associated with a character out of a character set, each one of said collection of documents is formed by characters drawn from said character set;
> a plurality of additional primary and secondary records, each one of said additional records provides a character-by-character pathway for locating an occurrence of a stem word in said collection of documents." See Ex. A.

21. Claim 18 of the '979 Patent is a practical application and inventive step of technology that address the specific computer-centric problem of indexing of document content for facilitating the rapid search and retrieval of large collections of documents.

22. Claim 18 of the '979 Patent addressed the need for an improved storage efficiency and improved access speed.

23. Specifically, to deal with the prior art technological problems, the system for flexible indexing of document content of Claim 18 in the '979 Patent requires (a) a computer system having a storage means for facilitating the retention and recall of a collection of documents to be indexed; (b) an indexing module for developing character-by-character index of words, (c) a plurality of records providing character-by-character addressing for said indexing module wherein

said plurality of records further comprises: (i) a first record providing an entry point into said index, said first record comprising a plurality of entries, each one of said entries being uniquely associated with a character out of a character set, each one of said collection of documents is formed by characters drawn from said character set; (ii) a plurality of additional primary and secondary records, each one of said additional records provides a character-by-character pathway for locating an occurrence of a stem word in said collection of documents.

24. These specific elements, as combined, accomplish the desired result an improved system and method for the flexible indexing of document content and facilitating rapid search and rapid retrieval of large collections of documents. Further, these specific elements also accomplish these desired results to overcome the then existing problems in the relevant field of computer-centric indexing and retrieval systems. *Ancora Technologies, Inc. v. HTC America, Inc.*, 908 F.3d 1343, 1348 (Fed. Cir. 2018) (holding that improving computer security can be a non-abstract computer-functionality improvement if done by a specific technique that departs from earlier approaches to solve a specific computer problem). See also *Data Engine Techs. LLC v. Google LLC*, 906 F.3d 999 (Fed. Cir. 2018); *Core Wireless Licensing v. LG Elecs., Inc.*, 880 F.3d 1356 (Fed. Cir. 2018); *Finjan, Inc. v. Blue Coat Sys., Inc.*, 879 F.3d 1299 (Fed. Cir. 2018); *Uniloc USA, Inc. v. LG Electronics USA, Inc.*, 957 F.3d 1303 (Fed. Cir. April 30, 2020).

25. Claims need not articulate the advantages of the claimed combinations to be eligible. *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, 957 F.3d 1303, 1309 (Fed. Cir. 2020).

26. These specific elements of Claim 18 of the ‘979 Patent were an unconventional arrangement of elements because the prior art methodologies would use array tries with limited storage efficiency, linked list tries with limited access speed, and/or binary search tries with limited access speed. Claim 18 of the ‘979 Patent was able to unconventionally provide relatively

increased storage efficiency and relatively greater access speed. *Cellspin Soft, Inc. v. FitBit, Inc.*, 927 F.3d 1306 (Fed. Cir. 2019).

27. Further, regarding the specific non-conventional and non-generic arrangements of known, conventional pieces to overcome an existing problem, Claim 18 in the '979 Patent does not preempt all ways of flexible indexing of document content. *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*, 827 F.3d 1341 (Fed. Cir. 2016); See also *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014).

28. Based on the allegations, it must be accepted as true at this stage, that Claim 18 of the '979 Patent recites a specific, plausibly inventive way of indexing document content for facilitation of the rapid search and retrieval of large collections of documents in a more efficient and faster manner. *Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1319 (Fed. Cir. 2019), *cert. denied sub nom. Garmin USA, Inc. v. Cellspin Soft, Inc.*, 140 S. Ct. 907, 205 L. Ed. 2d 459 (2020).

29. Alternatively, there is at least a question of fact that must survive the pleading stage as to whether these specific elements of Claim 18 of the '979 Patent were an unconventional arrangement of elements. *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121 (Fed. Cir. 2018) See also *Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018), *cert. denied*, 140 S. Ct. 911, 205 L. Ed. 2d 454 (2020).

30. Defendant commercializes, inter alia, methods that perform all the steps recited in at least one claim of the '979 Patent. More particularly, Defendant commercializes, inter alia, methods that perform all the steps recited in Claim 18 of the '979 Patent. Specifically, Defendant makes, uses, sells, offers for sale, or imports a method that encompasses that which is covered by Claim 18 of the '979 Patent.

DEFENDANT'S PRODUCT(S)

31. Defendant offers solutions, such as the "WebSphere Commerce V7.0" system (the "Accused Product")[1], that enables the efficient delivery of targeted results. A non-limiting and exemplary claim chart comparing the Accused Product of Claim 18 of the '979 Patent is attached hereto as Exhibit B and is incorporated herein as if fully rewritten.

32. As recited in Claim 18, a system, at least in internal testing and usage, utilized by the Accused Product is a system for flexible indexing of document content. See Ex. B.

33. As recited in one element of Claim 18, the system, at least in internal testing and usage, utilized by the Accused Product provides a computer system having storage means for facilitating the retention and recall of a collection of documents to indexed. See Ex. B.

34. As recited in another element of Claim 18, the system, at least in internal testing and usage, utilized by the Accused Product has an indexing module for developing character-by-character index of words. See Ex. B.

35. As recited in another element of Claim 18, the system, at least in internal testing and usage, utilized by the Accused Product has a plurality of streams for recording locations where each indexed word occurs in said collection of documents. See Ex. B.

36. As recited in another element of Claim 18, the system, at least in internal testing and usage, utilized by the Accused Product has a plurality of streams for recording locations where each indexed word occurs in said collection of documents; wherein said plurality of records further comprises: a first record providing an entry point into said index, said first record comprising a plurality of entries, each one of said entries being uniquely associated with a character out of a character set, each one of said collection of documents is formed by characters drawn from said

[1] The Accused Product is just one of the products provided by Defendant, and Plaintiff's investigation is on-going to additional products to be included as an Accused Product that may be added at a later date

character set; a plurality of additional primary and secondary records, each one of said additional records provides a character-by-character pathway for locating an occurrence of a stem word in said collection of documents. See Ex. B.

37. The elements described in the preceding paragraphs are covered by at least Claim 18 of the '979 Patent. Thus, Defendant's use of the Accused Product is enabled by what is described in the '979 Patent.

INFRINGEMENT OF THE PATENT-IN-SUIT

38. Plaintiff realleges and incorporates by reference all of the allegations set forth in the preceding paragraphs.

39. In violation of 35 U.S.C. § 271, Defendant is now, and has been directly infringing, either literally or under the doctrine of equivalents, the '979 Patent.

40. Defendant has had knowledge of infringement of the '979 Patent at least as of the service of the present Complaint.

41. Defendant has directly infringed and continues to directly infringe, either literally or under the doctrine of equivalents, at least one claim of the '979 Patent by using, at least through internal testing or otherwise, the Accused Product without authority in the United States, and will continue to do so unless enjoined by this Court. As a direct and proximate result of Defendant's direct infringement of the '979 Patent, Plaintiff has been and continues to be damaged.

42. Defendant has induced others to infringe the '979 Patent by controlling or encouraging infringement, knowing that the acts Defendant induced constituted patent infringement, and its encouraging acts actually resulted in direct patent infringement.

43. By engaging in the conduct described herein, Defendant has injured Plaintiff and is thus liable for infringement of the '979 Patent, pursuant to 35 U.S.C. § 271.

44. Defendant has committed these acts of infringement without license or authorization.

45. As a result of Defendant's infringement of the '979 Patent, Plaintiff has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's past infringement, together with interests and costs.

46. Plaintiff will continue to suffer damages in the future unless Defendant's infringing activities are enjoined by this Court. As such, Plaintiff is entitled to compensation for any continuing and/or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement.

47. Plaintiff reserves the right to modify its infringement theories as discovery progresses in this case; it shall not be estopped for infringement contention or claim construction purposes by the claim charts that it provides with this Complaint. The claim chart depicted in Exhibit B is intended to satisfy the notice requirements of Rule 8(a)(2) of the Federal Rule of Civil Procedure and does not represent Plaintiff's preliminary or final infringement contentions or preliminary or final claim construction positions.

DEMAND FOR JURY TRIAL

48. Plaintiff demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

a. That Defendant be adjudged to have directly infringed the '979 Patent either literally or under the doctrine of equivalents;

b. An accounting of all infringing sales and damages including, but not limited to, those sales and damages not presented at trial;

c. That Defendant, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be permanently restrained and enjoined from directly infringing the '979 Patent;

d. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Plaintiff for the Defendant's past infringement and any continuing or future infringement up until the date that Defendant is finally and permanently enjoined from further infringement, including compensatory damages;

e. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;

f. That Defendant be directed to pay enhanced damages, including Plaintiff's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285; and

g. That Plaintiff be granted such other and further relief as this Court may deem just and proper.

Dated: May 5, 2021

Respectfully submitted,

SAND, SEBOLT & WERNOW CO., LPA

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