

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

**ERR CONTENT IP, LLC,
Plaintiff,**

v.

**COMCAST CORPORATION D/B/A
XFINITY CORPORATION,
Defendant**

Civil Action No. 4:24-cv-04385

JURY TRIAL DEMANDED

PLAINTIFF’S ORIGINAL COMPLAINT

Plaintiff Err Content IP, LLC (“Err”) files this Original Complaint and demand for jury trial seeking relief from patent infringement of the claims of U.S. Patent No. 10,721,542 (“the ‘542 patent”) (referred to as the “Patent-in-Suit”) by Comcast Corporation D/B/A Xfinity Corporation (collectively, “Comcast” or “Defendant”).

I. THE PARTIES

1. Plaintiff Err Content IP, LLC is a Texas limited liability corporation with its principal place of business located in Austin, Texas.

2. On Information and belief, Defendant Comcast is a corporation organized and existing under the laws of Pennsylvania with a regular and established places of business throughout this District, including at least at 5600 Kirby Drive, Suite S4, Rice Village, Houston, TX 77005; 1901 Taylor Street, Suite B, Houston, TX 77007; and 5103 Bellaire Blvd, Suite 145, Bellaire, TX 77401 *See* <https://www.xfinity.com/local/store-offers?q=Houston%2C+TX%2C+USA>. Defendant is registered to do business in Texas and has may be served via its registered agent, Corporation Service Company, 2595 Interstate Drive, Suite 103, Harrisburg, Pennsylvania 17110, at its place of business, or wherever else they may be found.

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 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.

5. 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

A. Infringement of the ‘542 Patent

6. On July 21, 2020, U.S. Patent No. 10,721,542 (“the ‘542 patent”, included as Exhibit A and part of this complaint) entitled “Method and Device for Providing a Main Content and an Extra content to a User Through Reference Item” was duly and legally issued by the U.S. Patent and Trademark Office. Plaintiff owns the ‘542 patent by assignment.

7. The '542 patent relates to systems and methods for providing a main content and an extra content to a user by accessing said extra content through a reference item . The method includes receiving said main content from a first source and displaying said main content by said first device . Also , based on said reference item , said extra content is retrieved and / or received from a second source and simultaneously displayed together with said main content on said first device . Or said reference item may be forwarded to a second device , and thereby said extra content is retrieved and / or received from a second source by said second device and , simultaneously , the main content is displayed on said first device and the extra content is displayed on said second device.

8. Defendant develops, manufactures, maintains, operates, sells and administers systems and methods for displaying content from sources that infringes one or more of claims of the '542 patent, including one or more of claims 1-14, literally or under the doctrine of equivalents. Defendant puts the inventions claimed by the '542 Patent into service (i.e., uses them); but for Defendant's actions, the claimed-inventions embodiments involving Defendant's products and services would never have been put into service. Defendant's acts complained of herein caused those claimed-invention embodiments as a whole to perform, and Defendant's procurement of monetary and commercial benefit from it.

9. The term "Accused Instrumentalities" or "Accused Products" refers to, by way of example and without limitation, Comcast's Xfinity Home App System (e.g. <https://play.google.com/store/apps/details?id=com.comcast&pli=1>) and its uses thereof by Comcast's customer and testing. The charted method claims are directed towards the elements of Comcast's Home App that are used by Comcast's customers or in testing. Direct infringement of the method claims by Comcast is established because Comcast infringes vicariously by profiting from its customers use of the various Xfinity Home App and related systems. Stated another way,

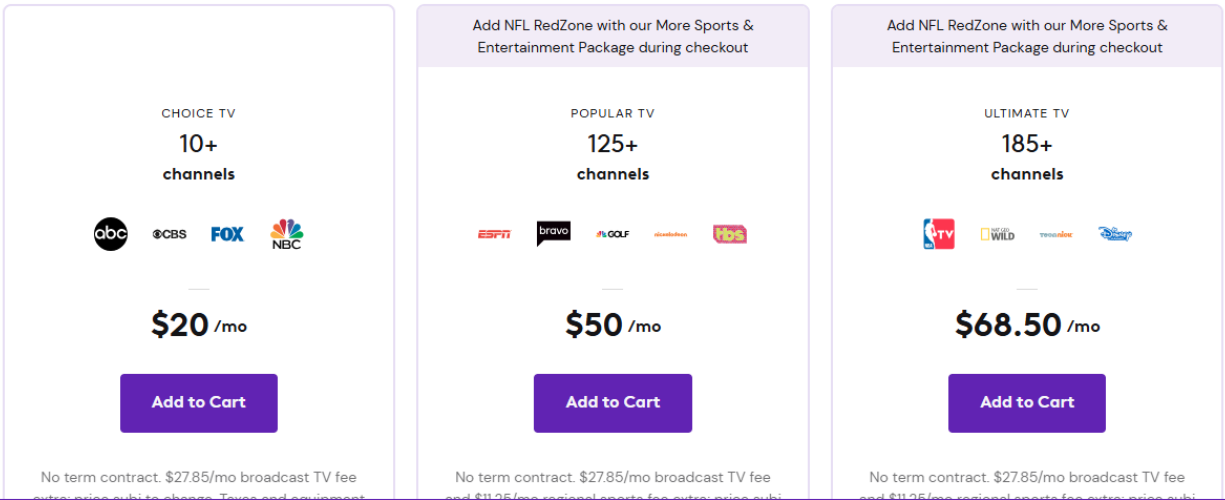
Comcast controls both the manner and timing of infringement. Comcast provides services, denoted as “Plans”, <https://www.xfinity.com/learn/digital-cable-tv>, that its customers can use to practice the infringing methods. Comcast benefits from its customer’s use by selling and/or renting the equipment and further by providing service plans at various prices that allow its customers content streaming by performing steps controlled by Comcast.

10. Comcast further controls its customers performance of the claimed methods by providing custom installation: <https://www.xfinity.com/support/articles/why-cant-install-my-own-equipment>. Comcast connects by wiring or connectivity various elements that cause its customers use of those elements to infringe the method claims of the Asserted Patents in the United States.

11. Comcast further controls the nature and timing of infringement by requiring its customers to agree to certain Terms and Conditions: <https://www.xfinity.com/learn/digital-cable-tv>

Restrictions apply. Not available in all areas. Services and features vary based on service level. Pricing and programming subject to change. Taxes and fees extra. 30-Day Guarantee applies to one month's recurring service charge and standard installation.
Internet: Xfinity xFi is available to Xfinity Internet service customers with a compatible Xfinity Gateway. Not available to Xfinity Prepaid only customers. For factors affecting speed visit www.xfinity.com/networkmanagement. xFi Advanced Security is available to Xfinity Internet customers with a compatible Xfinity xFi Gateway. Must activate Advanced Security through Xfinity app.
Xumo Stream Box from Xfinity: Restrictions apply. Not available to current Xfinity TV customers. Requires post-paid subscription to Xfinity Internet, excluding Internet Essentials. Taxes, fees and other applicable charges extra, and subject to change. One-time \$15 activation fee per account. Limited to 3 devices. Currently, one device included with monthly Xfinity Internet service. Additional devices \$5/mo. Pricing is subject to change. Taxes, fees and other applicable charges extra, and subject to change. All devices must be returned when service ends. Separate charges apply to On Demand and certain streaming services. Viewing will count against any Comcast data plan.
Peacock Premium: Eligible X1 TV box or Xumo Stream Box from Xfinity required. Service not available without Xfinity Internet or subscription to Digital Starter TV, or equivalent, or above. Peacock Premium is \$7.99/month. Peacock. © 2024 Peacock TV LLC. Peacock and related marks are trademarks of Peacock LLC. Individual programs, devices and marks are the property of their respective owners.
Streaming apps on X1 and Xumo Stream Box from Xfinity: Access to Disney+, Netflix, Prime Video, Hulu, YouTube, Max, and Paramount+ on Xfinity requires an eligible set-top box with Xfinity TV and Internet service. Disney+, Netflix streaming, Amazon Prime Video, Hulu, Max, and Paramount+ subscriptions required. Viewing uses your Internet service and will count against any Xfinity data plan. Streaming content limited to the U.S. Separate charges apply to On Demand and certain streaming services.
Xfinity Mobile: Restrictions apply. Not available in all areas. Xfinity Mobile requires residential post-pay Xfinity Internet. Line limitations may apply. Equip., intl. and roaming charges, taxes and fees, including reg. recovery fees, and other charges extra, and subj. to change. \$25/line/mo. charge applies if Xfinity TV, Internet or Voice post-pay services not maintained. Pricing subject to change. In times of congestion, your data may be temporarily slower than other traffic. For Xfinity Mobile Broadband Disclosures visit: www.xfinity.com/mobile/policies/broadband-disclosures.
© 2024 Comcast. All marks are the property of their respective owners. All rights reserved.

Comcast requires its customers to agree to minimum purchases to receive the benefits of the security system: <https://www.xfinity.com/digital/offers/plan-builder?lob=internet%2Ctv%7Ctv->



12. Support for the allegations of infringement may be found in the preliminary exemplary table attached as Exhibit B. These allegations of infringement are preliminary and are therefore subject to change.

13. Defendant has and continues to induce infringement. Defendant 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., displaying content from sources) such as to cause infringement of one or more of claims 1-14 of the ‘542 patent, literally or under the doctrine of equivalents. Moreover, Defendant has known of the ‘542 patent and the technology underlying it from at least the filing date of the lawsuit.¹ For clarity, direct infringement is previously alleged in this complaint.

14. Defendant has and continues to contributorily infringe. Defendant 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., instructing customers and others on the use of systems and methods for streaming content and related systems through its website

¹ Plaintiff reserves the right to amend if discovery reveals an earlier date of knowledge.

and product instruction manuals) such as to cause infringement of one or more of claims 1-14 of the '542 patent, literally or under the doctrine of equivalents. Moreover, Defendant has known of the '542 patent and the technology underlying it from at least the filing date of the lawsuit.² For clarity, direct infringement is previously alleged in this complaint. The product's and services' only reasonable use is an infringing use and there is no evidence to the contrary. The product and service is not a staple commercial product and Defendant had reason to believe that the customer's use of the product and/or service would be an infringing use. As shown on Defendant's website at <https://www.xfinity.com/learn/digital-cable-tv>, Defendant offers the products and/or service with instruction or advertisement that suggests an infringing use.

15. Defendant has caused and will continue to cause Plaintiff damage by direct and indirect infringement of (including inducing infringement of) the claims of the '542 patent.

IV. CONDITIONS PRECEDENT

16. Plaintiff has never sold a product. Upon information and belief, Plaintiff predecessor-in-interest has never sold a product. Plaintiff is a non-practicing entity, with no products to mark. Plaintiff has pled all statutory requirements to obtain pre-suit damages. Further, all conditions precedent to recovery are met. Under the rule of reason analysis, Plaintiff has taken reasonable steps to ensure marking by any licensee producing a patented article.

17. Plaintiff and its predecessors-in-interest have entered into settlement licenses with several defendant entities, but none of the settlement licenses were to produce a patented article, for or under the Plaintiff's patents. Duties of confidentiality prevent disclosure of settlement licenses and their terms in this pleading but discovery will show that Plaintiff and its predecessors-in-interest have substantially complied with Section 287(a). Furthermore, each of the defendant

² Plaintiff reserves the right to amend if discovery reveals an earlier date of knowledge.

entities in the settlement licenses did not agree that they were infringing any of Plaintiff's patents, including the Patents-in-Suit, and thus were not entering into the settlement license to produce a patented article for Plaintiff or under its patents. Further, to the extent necessary, Plaintiff will limit its claims of infringement to method claims and thereby remove any requirement for marking.

18. To the extent Defendant identifies an alleged unmarked product produced for Plaintiff or under Plaintiff's patents, Plaintiff will develop evidence in discovery to either show that the alleged unmarked product does not practice the Patents-in-suit and that Plaintiff has substantially complied with the marking statute. Defendant has failed to identify any alleged patented article for which Section 287(a) would apply. Further, Defendant has failed to allege any defendant entity produce a patented article.

19. The policy of § 287 serves three related purposes: (1) helping to avoid innocent infringement; (2) encouraging patentees to give public notice that the article is patented; and (3) aiding the public to identify whether an article is patented. These policy considerations are advanced when parties are allowed to freely settle cases without admitting infringement and thus not require marking. All settlement licenses were to end litigation and thus the policies of §287 are not violated. Such a result is further warranted by 35 U.S.C. §286 which allows for the recovery of damages for six years prior to the filing of the complaint.

20. For each previous settlement license, Plaintiff understood that (1) the settlement license was the end of litigation between the defendant entity and Plaintiff and was not a license where the defendant entity was looking to sell a product under any of Plaintiff's patents; (2) the settlement license was entered into to terminate litigation and prevent future litigation between Plaintiff and defendant entity for patent infringement; (3) defendant entity did not believe it produced any product that could be considered a patentable article under 35 U.S.C. §287; and, (4)

Plaintiff believes it has taken reasonable steps to ensure compliance with 35 U.S.C. §287 for each prior settlement license.

21. Each settlement license that was entered into between the defendant entity and Plaintiff was negotiated in the face of continued litigation and while Plaintiff believes there was infringement, no defendant entity agreed that it was infringing. Thus, each prior settlement license reflected a desire to end litigation and as such the policies of §287 are not violated.

V. JURY DEMAND

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

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- a. enter judgment that Defendant has infringed the claims of the Patent-in-Suit;
- b. award Plaintiff damages in an amount sufficient to compensate it for Defendant's infringement of the Patent-in-suit 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 Plaintiff 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 Plaintiff 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 (if) 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 Patent-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 Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

Ramey LLP

/s/ William P. Ramey, III
William P. Ramey, III
Texas Bar No. 24027643
wramey@rameyfirm.com

Jeffrey E. Kubiak
Texas Bar No. 24028470
jkubiak@rameyfirm.com

5020 Montrose Blvd., Suite 800
Houston, Texas 77006
(713) 426-3923 (telephone)
(832) 900-4941 (fax)

Attorneys for ERR CONTENT IP, LLC.