

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

FILED
U. S. DISTRICT COURT
Eastern District of Texas

PM OCT 21 2002

DAVID MAUAND, CLERK

By
Deputy

CIVIL ACTION

2-020 v -256

NATIONAL INSTRUMENTS CORP.

Plaintiff,

vs.

THE MATHWORKS, INC.

Defendant.

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JURY TRIAL

COMPLAINT

Plaintiff National Instruments Corporation ("National Instruments") files this complaint against The MathWorks, Inc. ("MathWorks").

PARTIES

1. Plaintiff National Instruments is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 11500 North Mopac Expressway, Austin, Texas 78759.

2. Upon information and belief, Defendant MathWorks is, and at all relevant times mentioned herein was, a corporation organized and existing under the laws of the State of California, with its principal place of business at 3 Apple Hill Road, Natick, Massachusetts 01760.

3. Plaintiff National Instruments is a developer and supplier of computer-based software and hardware products that engineers and scientists use in research and development, academia, and a variety of industries. National Instruments was formed in 1976, and since its inception has been an innovator of computer-based software and hardware products. The United

States Patent and Trademark Office (“USPTO”) has acknowledged many of National Instruments’ innovations by granting National Instruments patents on many of its inventions.

4. On October 26, 1999, the USPTO duly and legally issued United States Patent No. 5,974,254, entitled “Method for Detecting Differences Between Graphical Programs,” to National Instruments as the assignee of the inventor Ray Hsu (“the ‘254 patent”). National Instruments is and has been the sole and exclusive owner of the entire right, title and interest in and to the ‘254 patent. A copy of the ‘254 patent is attached as Exhibit A.

5. On October 24, 2000, the USPTO duly and legally issued United States Patent No. 6,138,270, entitled “System, Method and Memory Medium for Detecting Differences Between Graphical Programs,” to National Instruments as the assignee of the inventor Ray Hsu (“the ‘270 patent”). National Instruments is and has been the sole and exclusive owner of the entire right, title and interest in and to the ‘270 patent. A copy of the ‘270 patent is attached as Exhibit B.

6. On May 16, 2000, the USPTO duly and legally issued United States Patent No. 6,064,812, entitled “System and Method for Developing Automation Clients Using a Graphical Data Flow Program,” to National Instruments as the assignee of the inventors Murali Parthasarathy and Omid Sojoodi (“the ‘812 patent”). National Instruments is and has been the sole and exclusive owner of the entire right, title and interest in and to the ‘812 patent. A copy of the ‘812 patent is attached as Exhibit C.

7. On August 20, 2002, the USPTO duly and legally issued United States Patent No. 6,437,805 entitled “System and Method for Accessing Object Capabilities in a Graphical Program,” to National Instruments as the assignee of the inventors Omid Sojoodi, Robert Dye, Murali Parthasarathy, and Ram Kudukoli (“the ‘805 patent”). National Instruments is and has

been the sole and exclusive owner of the entire right, title and interest in and to the '805 patent. A copy of the '805 patent is attached as Exhibit D.

8. On March 24, 1998, the USPTO duly and legally issued United States Patent No. 5,732,277 entitled "Graphical System for Modelling a Process and Associated Method," to National Instruments as the assignee of the inventors Jeffrey L. Kodosky, James J. Truchard, and John E. MacCriskin ("the '277 patent"). National Instruments is and has been the sole and exclusive owner of the entire right, title and interest in and to the '277 patent. A copy of the '277 patent is attached as Exhibit E.

9. On January 9, 2001, the USPTO duly and legally issued United States Patent No. 6,173,438 entitled "Embedded Graphical Programming System," to National Instruments as the assignee of the inventors Jeffrey L. Kodosky, Darshan Shah, Samson DeKey, and Steven Rogers ("the '438 patent"). National Instruments is and has been the sole and exclusive owner of the entire right, title and interest in and to the '438 patent. A copy of the '438 patent is attached as Exhibit F.

10. Defendant MathWorks manufactures, uses, sells, and offers for sale computer-based software products that engineers and scientists use in research and development, academia, and a variety of industries, including in the State of Texas and in this District.

JURISDICTION AND VENUE

11. This is a claim of patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

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

13. Venue is properly laid in this Court pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT 1

Patent Infringement

14. Plaintiff National Instruments refers to and incorporates herein the allegations of Paragraphs 1-13 above.

15. Defendant MathWorks has been and is now directly infringing, and indirectly infringing by way of inducing infringement and/or contributing to the infringement, on National Instruments' '254, '270, '812, '805, '277, and '438 patents (the "National Instruments Patents") in this District and elsewhere by making, using, offering for sale, and selling products, including, but not limited to Simulink and associated products, covered by at least one claim of each of the National Instruments Patents, all to the injury of National Instruments.

16. At all relevant times, National Instruments has marked its products which embody or may be used to practice the inventions claimed in the National Instruments Patents in accordance with 35 U.S.C. § 287.

17. Upon information and belief, MathWorks had and has actual notice of the National Instruments Patents, MathWorks has been and is aware of its infringement, and MathWorks' infringement has been and continues to be willful.

18. National Instruments has been damaged by MathWorks' infringement of the National Instruments Patents and will continue to be damaged in the future unless MathWorks is permanently enjoined from infringing the National Instruments Patents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff National Instruments prays for the following relief:

A. A judgment that MathWorks has infringed the National Instruments Patents, directly and indirectly by way of inducing infringement and/or contributing to the infringement of the National Instruments Patents;

B. An injunction preventing MathWorks and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those active concert or participation with any of them, from infringing, inducing the infringement of, or contributing to the infringement of any of the National Instruments Patents;

C. A judgment and order requiring MathWorks to pay National Instruments damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, with interest;

D. A judgment and order requiring MathWorks to pay the costs of this action (including all disbursements) and attorneys fees as provided by 35 U.S.C. § 285; and

E. Such other and further relief as the Court deems just and equitable.

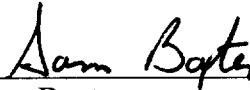
DEMAND FOR JURY TRIAL

National Instruments hereby demands that all issues be determined by jury.

DATED: October 21, 2002.

Respectfully submitted,

McKOOL SMITH, P.C.



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**ATTORNEYS FOR PLAINTIFF
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EXHIBITS
NOT
SCANNED