

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JUN 15 5 44:15

DDB Technologies, L.L.C.,

Plaintiff,

v.

MLB Advanced Media, L.P.,

Defendant.

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Civil Action No

9*
A04CA352 LY

JURY DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT AND DAMAGES

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff **DDB Technologies, L.L.C.**, files this Complaint for Patent Infringement and Damages against Defendant **MLB Advanced Media, L.P.**, and would respectfully show the Court as follows:

THE PARTIES

1. Plaintiff DDB Technologies, L.L.C. (“DDB”), is a Texas limited liability company having its principal place of business at 107 Laura Lane, Austin, Texas 78746, which is within this judicial district.

2. Defendant MLB Advanced Media, L.P. (“MLBAM”) is a Delaware limited liability partnership having its principal place of business at 75 Ninth Avenue, 5th Floor, New York, New York 10011. MLBAM transacts business within the State of Texas and in this judicial district, and has committed acts of patent infringement as hereinafter set forth within the State of Texas and in this judicial district. Such business includes, without limitation, MLBAM’s ownership and operation of the Internet website, MLB.com, which is available to,

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accessed by, and subscribed to by users, customers, and potential customers, of MLBAM within this judicial district.

JURISDICTION AND VENUE

3. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction under 35 U.S.C. §§ 271, *et seq.*, and 28 U.S.C. §§ 1331 and 1338.

4. This Court has personal jurisdiction over MLBAM pursuant to Tex. Civ. Prac & Rem. Code § 17.041 *et. seq.* Personal jurisdiction generally exists over MLBAM because MLBAM has minimum contacts with this forum as a result of business regularly conducted within the State of Texas and within this district, and, on information and belief, specifically as a result of, at least, committing the tort of patent infringement within Texas and this district. Personal jurisdiction also exists because, on information and belief, MLBAM has entered into numerous contracts with customers in Texas for products and services offered by MLBAM, which product and services include, among other things, the knowing and repeated transmission of computer files over the Internet. This Court's jurisdiction over MLBAM comports with the constitutional standards of fair play and substantial justice and arises directly from the MLBAM's purposeful minimum contact with the State of Texas.

5. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and (c) and 28 U.S.C. § 1400(b).

6. Although MLBAM has engaged in business in the State of Texas, MLBAM has not designated an agent for service in the State. Therefore, the Secretary of the State is an agent for service of process for MLBAM pursuant to Tex. Civ. Prac & Rem. Code § 17.044.

THE PATENTS-IN-SUIT

7. On February 23, 1993, United States Patent No. 5,189,630 (“the ‘630 Patent”), entitled “Method for Encoding and Broadcasting Information About Live Events Using Computer Pattern Matching Techniques,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘630 patent is attached hereto as Exhibit A.

8. On June 11, 1996, United States Patent No. 5,526,479 (“the ‘479 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘479 Patent is attached hereto as Exhibit B.

9. On September 23, 1997, United States Patent No. 5,671,347 (“the ‘347 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘347 Patent is attached hereto as Exhibit C.

10. On March 20, 2001, United States Patent No. 6,204,862 (“the ‘862 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘862 Patent is attached hereto as Exhibit D.

11. David R. Barstow and Daniel W. Barstow assigned the '630, '479, '347, and '862 Patents to DDB. DDB owns all right, title and interest in and to the '630, '479, '347, and '862 Patents (referred to collectively herein as "the DDB Patents").

FACTS

12. In the 1980's and continuing through the early 1990's, Dr. David R. Barstow, a Partner in and the President of DDB, along with his brother, Daniel W. Barstow, a Partner in DDB, developed a method and apparatus for broadcasting live events (such as baseball games) to another location and producing a computer simulation of such events at that location. They also developed a method of encoding information about live events to allow the broadcasting of information pertaining to any one of a number of different actions that may take place during such events. All of this technology is embodied in the DDB Patents.

13. Between the summer of 1996 and the spring of 1997, Dr. David R. Barstow along with other representatives of DDB's predecessor-in-interest, Instant Sports, met with representatives of Major League Baseball ("MLB"), the predecessor-in-interest of MLBAM, including Ethan Orlinsky, on numerous occasions regarding establishing a business relationship. The DDB Patents that existed at that time were a central issue in these discussions.

14. Between the spring and fall of 1999, representatives of DDB met with representatives of MLB on several occasions, which ultimately led to a proposal from DDB to provide an "Umpire Management System" that exploited the DDB technology.

15. On or about September 23, 1999, representatives of DDB made a presentation to MLB representatives (Ralph Nelson, Sandy Alderson and several representatives of the

umpires) at MLB headquarters in New York. The meeting included a demonstration of the use of DDB's technology and explicitly referenced DDB's Patents.

16. On or about October 16, 1999, DDB made a presentation and proposal in Dallas to Ralph Nelson, a MLB representative, which included specific financial arrangements regarding an Umpire Management System, as well as use of the video database for providing fan services. At the conclusion of the meeting, Ralph Nelson informed DDB that he had decided to use DDB's patented technology.

17. Between late October and early November of 1999, Ralph Nelson informed DDB that Sandy Alderson allegedly decided that MLB did not intend to proceed with that deal.

18. In November and December of 1999, DDB contacted Robert DuPuy, a representative of MLB, to suggest alternative business relationships through which MLB could exploit DDB's technology and patents. Robert DuPuy informed DDB that MLB would not proceed with further technical development before holding further discussions with DDB. However, after that time, neither Robert DuPuy nor any other representative of MLB or MLBAM contacted DDB to continue the discussions.

19. Ultimately, without DDB's permission, MLBAM began providing various text, graphics, and video products and services over the Internet that embody the invention(s) set forth in the DDB patents. For example, MLBAM's GAMEDAY feature disseminates information about live baseball games electronically via the Internet using computer simulation techniques. In particular, it uses diagrams and text to show the current state of each game, and is continually updated based on play-by-play data. CONDENSED GAMES is a video service provided by MLBAM that shows a shortened version of each game and

includes the significant plays of the game (hits, outs, stolen bases, etc.). SEARCHABLE VIDEO (formerly called CUSTOM CUTS) is a feature that retrieves video clips for plays that match certain criteria selected by the user (e.g., player, type of play, situation). HIGHLIGHT REELS is a feature that retrieves video clips (similar to those in SEARCHABLE VIDEO) and e-mails them to the user. Finally, FANTASY PLAYER TRACKER is a feature that notifies the fan whenever one of his or her favorite players is active in a live game (e.g., on deck, at bat, pitching, etc.).

20. In March 2002, DDB and its lawyers contacted MLBAM to offer terms for a non-exclusive license to the technology covered by DDB's Patents. After a few contacts between lawyers for DDB and MLBAM, MLBAM did not respond to, or even acknowledge, further attempts by DDB to initiate discussions about a non-exclusive license.

21. MLBAM, and its predecessor-in-interest MLB, has known of the technology embodied in the DDB Patents continuously since at least as early as 1996. Specifically it has known of one or more of the DDB Patents since at least as early as 1996, including, for example, the '630 and '479 Patents.

22. Despite its awareness of and interest in the DDB Patents, MLBAM has and still is infringing the DDB patents by making, selling, offering for sale, and using products or services embodying the invention(s) set forth in the DDB Patents including, without limitation, the GAMEDAY, CONDENSED GAMES, SEARCHABLE VIDEO, HIGHLIGHT REELS, and FANTASY PLAYER TRACKER services available through MLBAM's MLB.com web site, and by inducing and/or contributing to the infringement of the DDB Patents by others.

COUNT I
INFRINGEMENT OF THE '630 PATENT

23. DDB repeats and realleges each of the allegations of paragraphs 1 through 22 as if set forth fully herein.

24. By its conduct, MLBAM is directly infringing, inducing others to infringe and contributing to infringement of the '630 Patent in violation of 35 U.S.C. § 271.

25. On information and belief, MLBAM had actual notice of the existence of the '630 Patent, and despite such notice, has continued to engage in acts of infringement of the '630 Patent. MLBAM's continued acts of infringement have been, and will continue to be, wanton and willful.

26. MLBAM's infringing activities have damaged and continue to damage DDB. Upon information and belief, MLBAM will continue to infringe the '630 Patent, causing irreparable harm to DDB unless enjoined by this Court.

COUNT II
INFRINGEMENT OF THE '479 PATENT

27. DDB repeats and realleges each of the allegations of paragraphs 1 through 26 as if set forth fully herein.

28. By its conduct, MLBAM is directly infringing, inducing others to infringe and contributing to infringement of the '479 Patent in violation of 35 U.S.C. § 271.

29. On information and belief, MLBAM had actual notice of the existence of the '479 Patent, and despite such notice, has continued to engage in acts of infringement of the '479 Patent. MLBAM's continued acts of infringement have been, and will continue to be, wanton and willful.

30. MLBAM's infringing activities have damaged and continue to damage DDB. Upon information and belief, MLBAM will continue to infringe the '479 Patent, causing irreparable harm to DDB unless enjoined by this Court.

COUNT III
INFRINGEMENT OF THE '347 PATENT

31. DDB repeats and realleges each of the allegations of paragraphs 1 through 30 as if set forth fully herein.

32. By its conduct, MLBAM is directly infringing, inducing others to infringe and contributing to infringement of the '347 Patent in violation of 35 U.S.C. § 271.

33. On information and belief, MLBAM had actual notice of the existence of the '347 Patent, and despite such notice, has continued to engage in acts of infringement of the '347 Patent. MLBAM's continued acts of infringement have been, and will continue to be, wanton and willful.

34. MLBAM's infringing activities have damaged and continue to damage DDB. Upon information and belief, MLBAM will continue to infringe the '347 Patent, causing irreparable harm to DDB unless enjoined by this Court.

COUNT IV
INFRINGEMENT OF THE '862 PATENT

35. DDB repeats and realleges each of the allegations of paragraphs 1 through 34 as if set forth fully herein.

36. By its conduct, MLBAM is directly infringing, inducing others to infringe and contributing to infringement of the '862 Patent in violation of 35 U.S.C. § 271.

37. On information and belief, MLBAM had actual notice of the existence of the '862 Patent, and despite such notice, has continued to engage in acts of infringement of the

'862 Patent. MLBAM's continued acts of infringement have been, and will continue to be, wanton and willful.

38. MLBAM's infringing activities have damaged and continue to damage DDB. Upon information and belief, MLBAM will continue to infringe the '862 Patent, causing irreparable harm to DDB unless enjoined by this Court.

REQUEST FOR JURY TRIAL

39. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, DDB demands a trial by jury of any issue triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiff DDB prays for relief against MLBAM as follows:

A. That the '630, '479, '347 and '862 Patents ("the DDB Patents") be adjudged infringed by MLBAM and that the infringement be held to be willful;

B. That DDB be awarded compensatory damages for past infringement of the DDB Patents by MLBAM in an amount no less than a reasonable royalty, in a sum to be determined at trial, and that said damages be trebled in view of the willful and deliberate nature of the infringement;

C. That MLBAM, its officers, agents, servants, employees and attorneys, and other persons in active concert or participation with MLBAM be preliminarily and permanently enjoined from further infringement of the DDB Patents;

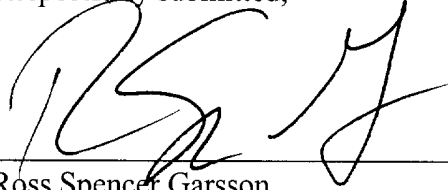
D. That MLBAM be ordered to deliver to DDB for destruction all infringing products and systems in their possession;

E. That this case be declared an exceptional case under 35 U.S.C. § 285 as to MLBAM, and that DDB be awarded its attorney fees incurred in this action;

F. For an award of DDB's costs of this action, any applicable interest on the award and other charges to the maximum extent permitted; and

G. For such other further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,



Date: June 15, 2004

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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

**Notice of Document/Attachment(s) Not Imaged
but Stored with Document in Case File**

See Original File to View/Copy Document/Attachment(s)

Civil Case No. 1:04cv352-LY

DDB Technologies

VS.

MLB Advanced Media

Attachments to

Document #: 1

Description: Complaint

File Date: 6/15/04

Prepared by: JK

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