

FILED

2011 MAY -9 P 3:50

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

IHANCE, INC.,

Plaintiff,

v.

ELOQUA LIMITED and ELOQUA CORPORATION,

Defendants.

Case No. 2-11 CV 257
MSD/TEM
JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, iHance, Inc. ("iHance"), by its attorneys, hereby alleges 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.

PARTIES

2. Plaintiff, iHance, Inc. ("iHance"), is a corporation organized and existing under the laws of the State of California, with its principal place of business at 222 Columbus Avenue, San Francisco, California 94133.

3. Defendant Eloqua Limited is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 1921 Gallows Road, Suite 250, Vienna, Virginia 22182.

4. Defendant Eloqua Corporation is a corporation organized and existing under the laws of Canada, with its principal place of business at 553 Richmond Street West, Suite 214, Toronto, Ontario M5V 1Y6, Canada.

5. At all times relevant hereto, Defendants acted under common ownership and control and served as the agents of one another in infringing iHance's patents. Defendants are sometimes collectively referred to herein as "Eloqua."

JURISDICTION AND VENUE

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

7. Defendant Eloqua Limited is subject to personal jurisdiction in Virginia because, among other things, Eloqua Limited is a resident and citizen of the Commonwealth of Virginia. Defendant Eloqua Limited is also subject to personal jurisdiction in Virginia because, among other things, Eloqua Limited makes, markets, sells, and provides demand generation software and services throughout the United States and within the Commonwealth of Virginia and therefore transacts business within the Commonwealth of Virginia related to iHance's claims, and/or has engaged in systematic and continuous business contacts within the Commonwealth of Virginia.

8. Defendant Eloqua Corporation is subject to personal jurisdiction in Virginia because, among other things, Eloqua Corporation, itself and through its commonly owned and controlled affiliate Eloqua Limited, makes, markets, sells, and provides demand generation software and services throughout the United States and within the Commonwealth of Virginia and therefore transacts business within the Commonwealth of Virginia related to iHance's claims, and/or has engaged in systematic and continuous business contacts within the Commonwealth of Virginia.

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b)-(d) and 1400(b).

BACKGROUND

A. iHance's Solution to a Problem in the Demand Generation Field.

10. iHance and Eloqua, each formed more than ten years ago, provide software and services in the field of demand generation solutions for sales and marketing professionals.

11. Demand generation solutions help companies focus their marketing and sales programs to increase awareness of and interest in the companies' products and services (particularly in connection with business-to-business or big-ticket consumer transactions) and help convert sales leads into customers. Demand generation is a growing part of the customer relationship management ("CRM") industry, which provides marketing and sales solutions on which U.S. companies spend billions of dollars annually.

12. A company's marketing department normally is charged with creating general awareness of and interest in a product or service, but its sales department typically bears responsibility for identifying, prioritizing, and nurturing potential individual leads and converting them into customers.

13. As Internet marketing and sales developed in the 1990s, companies began to take advantage of tracking technology, such as cookies and tracking codes, to learn more about the web behavior of potential customers. These technologies permitted a company to send tracked mass emails to potential customers and thereby identify at a rudimentary level who was opening these emails, who was clicking on links in the emails, and what portions of the company's website were being visited.

14. These technologies, however, did not allow individual sales representatives to track the unique behavior of individual sales leads in response to their own emails sent from their own regular email programs, such as Microsoft Outlook. (In the software industry, email programs are commonly referred to as email “clients.” The patents-in-suit use the terminology email “clients.”)

15. Thus, for many years, a sales representative who communicated with sales leads via his or her regular email client was unable to learn valuable information about the behavior of the recipients, such as whether and when the recipients had shown interest in a product or service by opening the sales representative’s email and visiting particular pages on the company’s website. Consequently, a tremendous amount of valuable information that could have been generated by a sales representative’s email correspondence was left untapped by then-existing technology.

16. In 2000, one of iHance’s founders, Andrew Knox, recognized this problem and devised ways to solve it: software and services that would permit individual sales representatives to send their own emails, from their own email clients, while uniquely identifying who opened their emails, clicked on the links in the emails, what pages on the company’s site the recipients visited, and the precise time any of this activity occurred. Thanks to this solution, rather than relying on the limited capabilities of then-existing technology, a sales representative, using his or her regular email client, would be able to monitor an individual sales lead’s behavior in response to the sales representative’s regular email activities, such as sending and replying to emails. iHance’s solution included a number of other features, such, as, by way of example only, providing the ability to uniquely identify multiple recipients of a single email sent from a sales representative’s email client.

B. iHance's Development of Its Innovative Technology and Sales of Its Software Products and Services.

17. Mr. Knox formed iHance in November 2000 and, with co-inventor Lars Knox and co-founder and co-inventor John Hart, over the course of 2001 created a beta version of the software that was used by customers no later than December 2001.

18. In November 2001, Messrs. Knox filed with the United States Patent and Trademark Office a provisional patent application, titled "Method and Apparatus for Monitoring the Email and Website Behavior of an Email Recipient."

19. iHance began promoting its software and service, including on its website, where it explained in December 2001:

- **"Addictive Technology.** Once you've experienced the Ihance solution there is no going back. Simply knowing when your customer or prospect is browsing your site allows you to call at just the right time. Seeing what they're interested in makes your conversation hit the mark."

- **"Imagine Knowing.** Imagine a sales rep knowing which prospects are browsing the site, what products they are looking at, which options they're considering. Imagine a sales rep knowing when contacts have read their message, downloaded the latest update or begun researching support policies. In sales, knowledge is power and timing is everything. Ihance delivers knowledge in time to use it."

20. iHance continues to market and support this software solution, now called iHance Vision, to customers throughout the United States. iHance also sells Absolute Automation, an email integration software product for users of salesforce.com's CRM software. More than 400 paying companies use iHance software. iHance's Absolute Automation software received salesforce.com's Best Apps of 2008 and 2010 awards, was twice voted by salesforce.com's users

the best productivity application of the year, and has been the second most popular paid application on the salesforce.com AppExchange for 2011 year to date.

C. The USPTO's Issuance to iHance of Patent Nos. 7,072,947 and 7,076,533.

21. In November 2002, iHance filed applications to patent its inventions.

22. On July 4, 2006, United States Patent No. 7,072,947 ("the '947 patent"), titled "Method and System for Monitoring E-mail and Website Behavior of an E-mail Recipient," was duly and legally issued by the U.S. Patent and Trademark Office ("USPTO"). The '947 patent is attached as Exhibit A hereto.

23. iHance is the assignee of the '947 patent.

24. On July 11, 2006, United States Patent No. 7,076,533 ("the '533 patent"), titled "Method and System for Monitoring E-mail and Website Behavior of an E-mail Recipient," was duly and legally issued by the USPTO. The '533 patent is attached as Exhibit B hereto.

25. iHance is the assignee of the '533 patent.

D. iHance's First Communications with Eloqua.

26. In or about February 2002, iHance contacted Eloqua, which at that time also was (and still is) a provider of demand generation software and services. iHance sought to explore partnering with Eloqua to use iHance's technology in the software and services that Eloqua provided its own customers. At the time, Eloqua described itself as a company that "provides software that leverages the Internet to generate sales" and that can be used "to attract, identify, qualify and build relationships with ideal prospects."

27. After this initial contact, Eloqua employees repeatedly in February 2002 visited numerous pages on the iHance website, including the pages detailing the features of iHance's software product.

28. An Eloqua executive told iHance that Eloqua would be interested in seeing a demonstration of the product. Accordingly, in February 2002, iHance and Eloqua representatives participated in a conference call in which iHance, using screen-sharing software, demonstrated how the iHance software product worked. The demonstration revealed, among other things, how a sales representative could track sales leads' email and web behavior in response to email sent from the sales representative's own email client. During the conference call, iHance told Eloqua that it had filed a provisional patent application covering the technology that was being demonstrated. During the conference call, the Eloqua executive expressed interest in iHance's software and reported that Eloqua itself had nothing like it.

E. Eloqua's Copying of iHance Technology and Sale of a Competing Software Product and Service.

29. Notwithstanding the interest expressed by the Eloqua executive, Eloqua stopped communicating with iHance after the conference call. iHance representatives attempted to follow up numerous times, by both telephone and email, but were never able to reach their Eloqua contact. In addition, none of the iHance representatives' calls or emails was ever returned.

30. On information and belief, after the conference call Eloqua turned to developing its own software and service to copy the iHance features presented to its employees during the demonstration referenced above. Several months later, in or about June 2002, Eloqua announced the availability of a new product, ultimately called Eloqua for Microsoft Outlook® ("ELMO").

31. By June 2002, Eloqua had revised its website so that it now featured the new product that had been copied from iHance:

- **"Outbound Desktop Integration** allows each sales rep to send emails from their desktop email provider (ie MS Outlook), and have these emails tracked"

- **“Full Email Tracking.** As an added benefit, each email that you send is Eloqua-enabled, giving you the full power of Eloqua trackability and website profiling on each outbound email.”

32. Although Eloqua had stopped communicating directly with iHance, its employees continued to visit iHance’s website regularly. For example, in November 2002 an Eloqua employee visited a testimonials page on iHance’s website, which featured quotations from satisfied iHance customers. Shortly thereafter, Eloqua cold-called one of the iHance customers featured on the iHance testimonials page and attempted to sell Eloqua software to it. This solicitation of iHance customers has continued to the present day.

33. On information and belief, Eloqua has continuously offered to customers the iHance-based Outlook-integration software product that Eloqua now calls ELMO, and has continuously provided services in support of the product. In connection with the release of the 2008 version of the product, Eloqua described ELMO as “an integral part of Eloqua’s Essential Sales Tool Kit.” Eloqua’s training center website currently describes ELMO as “a major feature of the Sales Conversion product.”

F. iHance’s Notification of Eloqua’s Infringement and Eloqua’s Refusal to Cease Infringing.

34. After the ’947 and ’533 patents issued, iHance by letter dated November 20, 2006 notified Eloqua that it was infringing the patents and offered to engage in negotiations for a license. iHance received no response to its letter.

35. In September 2007, after learning that Eloqua had replaced its CEO, iHance resent a copy of the letter to the new CEO, receipt of which was acknowledged in an October 1, 2007 email. In subsequent communications, iHance repeated its request that Eloqua stop infringing iHance’s

patents. In response, Eloqua's CEO warned iHance that if it did not back down, this would set in motion a process that could not be stopped.

36. Shortly after Eloqua's CEO issued this promise, the USPTO in December 2007 received anonymous *ex parte* petitions for reexamination challenging the validity of the '947 and '533 patents. The anonymous party filing the request was represented by counsel from Buffalo, New York, across Lake Ontario from Toronto, where Eloqua at that time had its headquarters. Upon information and belief, the petitions for re-examination were filed at the direction of Eloqua.

37. The reexamination proceedings lasted several years, but both challenges failed in their entirety. In September 2009, the USPTO issued a reexamination certificate for the '947 patent. In January 2011, the USPTO gave notice that it would issue a reexamination certificate for the '533 patent.

38. As a result of Eloqua's willful infringement of iHance's patents, iHance has suffered damages including but not limited to lost sales of its iHance Vision software product as a result of Eloqua offering and selling its ELMO software product at cut-rate prices made possible by Eloqua's unfair free-riding on patented iHance technology.

COUNT I
(Patent Infringement – '947 Patent)

39. iHance realleges Paragraphs 1 through 38 of this Complaint above as if fully set forth herein.

40. The '947 patent was duly and legally issued on July 4, 2006.

41. Defendants have had knowledge of the '947 patent since November 2006, at the latest.

42. iHance is the owner, by assignment, of all right, title, and interest in and to the '947 patent.

43. Defendants have made, used, provided, imported, offered for sale, sold, and continue to use, provide, offer for sale, and sell software products and services and other related products in the United States, including without limitation the Eloqua for Microsoft Outlook® (“ELMO”) software product and any predecessor products.

44. Defendants have infringed and/or have contributed to infringement by others and/or have induced others to infringe and, unless enjoined, will continue to infringe and/or contribute to the infringement by others and/or induce others to infringe claims of the '947 patent by, among other things, making, using, importing, providing, selling and/or offering to sell, software products and services covered by the email and website tracking claims of the '947 patent or equivalents thereof, including without limitation the ELMO software product and any predecessor products.

45. iHance has been damaged by Defendants' infringement of the '947 patent in an amount to be determined at trial.

46. The infringement of the '947 patent by Defendants has caused and is causing iHance to suffer irreparable harm and injury.

47. The infringement by Defendants of the '947 patent is in direct violation of iHance's rights under 35 U.S.C. § 271 to exclude others from making, using, selling, and/or offering for sale products and services embodying the invention of the '947 patent.

48. iHance has no adequate remedy at law.

49. iHance will continue to suffer irreparable harm unless an injunction is issued enjoining and restraining Defendants from infringing the '947 patent.

50. Defendants' infringement of the '947 patent has been and continues to be willful.

COUNT II
(Patent Infringement – '533 Patent)

51. iHance realleges Paragraphs 1 through 38 of this Complaint above as if fully set forth herein.

52. Defendants have had knowledge of the '533 patent since November 2006, at the latest.

53. The '533 patent was duly and legally issued on July 11, 2006.

54. iHance is the owner, by assignment, of all right, title, and interest in and to the '533 patent.

55. Defendants have made, used, provided, imported, offered for sale, sold, and continue to use, provide, offer for sale, and sell software products and services and other related products in the United States, including without limitation the ELMO software product and any predecessor products.

56. Defendants have infringed and/or have contributed to infringement by others and/or have induced others to infringe and, unless enjoined, will continue to infringe and/or contribute to the infringement by others and/or induce others to infringe claims of the '533 patent by, among other things, making, using, importing, providing, selling and/or offering to sell, software products and services covered by the email and website tracking claims of the '533 patent or equivalents thereof, including without limitation the ELMO software product and any predecessor products.

57. iHance has been damaged by Defendants' infringement of the '533 patent in an amount to be determined at trial.

58. The infringement of the '533 patent by Defendants has caused and is causing iHance to suffer irreparable harm and injury.

59. The infringement by Defendants of the '533 patent is in direct violation of iHance's rights under 35 U.S.C. § 271 to exclude others from making, using, selling, and/or offering for sale products and services embodying the invention of the '533 patent.

60. iHance has no adequate remedy at law.

61. iHance will continue to suffer irreparable harm unless an injunction is issued enjoining and restraining Defendants from infringing the '533 patent.

62. Defendants' infringement of the '533 patent has been and continues to be willful.

RELIEF REQUESTED

WHEREFORE, by reason of the foregoing, iHance respectfully requests the following relief:

(a) A judgment that that Defendants have infringed and are infringing the '947 patent and that such infringement is willful;

(b) A judgment that Defendants have infringed and are infringing the '533 patent and that such infringement is willful;

(c) An injunction preventing the Defendants, and all persons acting in concert with them, from making, using, selling, offering for sale, marketing, distributing, providing customer support for, or importing the Eloqua for Microsoft Outlook® software product, or any product, service, or system that infringes the '947 patent, or the inducement of or the contribution to any of the foregoing, prior to the expiration date of the '947 patent, inclusive of any extension(s) and additional period(s) of exclusivity;

(d) An injunction preventing the Defendants, and all persons acting in concert with them, from making, using, selling, offering for sale, marketing, distributing, providing customer support for, or importing the Eloqua for Microsoft Outlook® software product, or any product,

service, or system that infringes the '533 patent, or the inducement of or the contribution to any of the foregoing, prior to the expiration date of the '533 patent, inclusive of any extension(s) and additional period(s) of exclusivity;

(e) A judgment that iHance be awarded damages in connection with Defendants' infringement, contributory infringement, and inducement of infringement of the '947 patent and the '533 patent as measured by iHance's lost profits and/or a reasonable royalty, and that such damages be trebled, together with pre-judgment and post-judgment interest thereon, in an amount to be determined at trial but in no event less than one hundred million dollars (\$100,000,000.00);

(f) A judgment in iHance's favor for an accounting for the gains, profits, and advantages derived by Defendants, directly or indirectly, by their unlawful acts of patent infringement, and for damages in an amount adequate to compensate iHance for monetary damages resulting from the wrongful conduct of Defendants;

(g) A declaration that this is an exceptional case and an award of attorneys' fees pursuant to 35 U.S.C. § 285.

(h) An award of iHance's costs and expenses in this action, together with costs and pre-judgment and post-judgment interest, as appropriate, and as authorized by any statute or law applicable to any claim made in this Complaint; and

(i) Such further and other relief as this Court may deem just and proper.

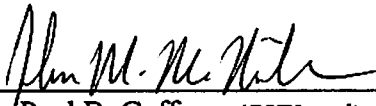
JURY DEMAND

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: May 9, 2011

Respectfully submitted,

WILLIAMS & CONNOLLY LLP

By: 
Paul B. Gaffney (*PHV application to be filed*)
Thomas G. Hentoff (*PHV application to be filed*)
John M. McNichols (VSB No. 66663)
Thomas S. Fletcher (*PHV application to be filed*)

725 Twelfth Street, N.W.
Washington, D.C. 20005
(202) 434-5000 (telephone)
(202) 434-5029 (facsimile)
pgaffney@wc.com
thentoff@wc.com
jmcnichols@wc.com
tfletcher@wc.com

Attorneys for Plaintiff, iHance, Inc.