

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

JAN 19 2006

By: *[Signature]* LUTHER D. THOMAS, Clerk
Deputy Clerk

WITNESS SYSTEMS, INC.,

Plaintiff,

v.

NICE SYSTEMS, INC. and
NICE SYSTEMS LTD.,

Defendants.

CIVIL ACTION NO.

1 06 - CV - 0126

[Handwritten initials]

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff WITNESS SYSTEMS, INC. ("Witness Systems") makes the following allegations and averments for its Complaint for Patent Infringement against Defendants NICE SYSTEMS, INC. ("NICE Inc.") and NICE SYSTEMS LTD. ("NICE Ltd.") (collectively "NICE"):

PARTIES

1.

Plaintiff Witness Systems is a Delaware corporation with a principal place of business at 300 Colonial Center Parkway, Roswell, Georgia, 30076.

EXHIBIT RECEIVED
Consent to US...
Pretrial Instructions _____
JUDGE VILMONT *[Signature]*

2.

Defendant NICE Systems, Inc. is a Delaware corporation with a principal place of business at 301 Route 17 North 10th Floor, Rutherford, New Jersey 07070. NICE Inc. is a wholly owned subsidiary of NICE Ltd., an Israeli corporation.

3.

Defendant NICE Ltd. is an Israeli corporation with a principal place of business at 8 Hapnina Street, P.O. Box 690, 43107 Ra'anana, Israel. Through its 2005 filing with the Securities and Exchange Commission under Rule 20-F, NICE Ltd. has stated that its "agent for service in the United States is [NICE Systems Ltd.'s] subsidiary, NICE Systems, Inc., 301 Route 17 North, Rutherford, New Jersey 07070."

JURISDICTION AND VENUE

4.

This Court has subject matter jurisdiction over the claims set forth below based on applicable statutory provisions, including 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5.

The Court has personal jurisdiction over NICE based on its business activities in this District, including its shipments of infringing products into this District and related services.

6.

This Court is a proper venue under 28 U.S.C. § 1391(b) & (c) and § 1400(b).

FACTS

U.S. PATENT NO. 6,404,857

7.

On June 11, 2002, the U.S. Patent & Trademark Office (“USPTO”) issued U.S. Patent 6,404,857 B1 (“the ‘857 Patent”), entitled “Signal Monitoring Apparatus for Analyzing Communications.” As assignee, Witness Systems owns all right, title, and interest in the ‘857 Patent, including the right to recover damages for past, present and future infringement of the patent and the right to seek injunctive relief against infringement of the patent. A true and correct copy of the ‘857 Patent is attached as Exhibit A.

8.

The ‘857 Patent claims software and computer-based systems that allow one to monitor and analyze communications to detect the presence of a predetermined

parameter in or associated with a communication. For example, using the claimed systems, one could monitor voice communications and determine whether a party to the communication was angry and perhaps take some action as a result of that emotion detection.

THE ACCUSED NICE PRODUCTS

9.

NICE Ltd. markets, develops, manufactures, offers for sale, and imports into the United States products that can be used to monitor communications and detect the presence of a predetermined parameter. NICE Inc. markets, offers for sale and sells such products within the United States.

10.

NICE's materials state that the "NICE PerformTM" product suite, working in conjunction with other NICE hardware and software, allows one to monitor communications and "extract[] non-linguistic information, such as pitch modulation and speech rate to assist the determination of the emotion of the speaker."

11.

These and other NICE materials confirm that NICE has infringed and continues to infringe claims of the '857 Patent.

CAUSE OF ACTION

COUNT I - INFRINGEMENT OF THE '857 PATENT

12.

Witness Systems incorporates the allegations contained in paragraphs 1-11 above as if set forth verbatim herein.

13.

NICE has infringed and continues to infringe one or more claims of the '857 Patent under 35 U.S.C. § 271.

14.

Those infringing activities include the marketing, promotion, development, use, importation, offer for sale and sale of NICE Perform™ and related NICE hardware and software.

15.

Upon information and belief, such infringing activities have been and continue to be willful given NICE's knowledge of the '857 Patent.

PRAYER FOR RELIEF

WHEREFORE, Witness Systems prays for entry of judgment that:

1. NICE Ltd. and NICE Inc. have infringed and continue to infringe one or more claims of the '857 Patent;

2. NICE Ltd. and NICE Inc. account for and pay to Witness Systems all damages allowed by law for infringement of the '857 Patent, and that such damages be trebled if NICE's infringement is found to be willful;

3. NICE Ltd. and NICE Inc. and their officers, agents, servants, employees and those persons in active concert or participation with them be preliminarily and permanently enjoined from any further infringement of the '857 Patent pursuant to 35 U.S.C. § 283;

4. NICE Ltd. and NICE Inc. pay to Witness Systems pre-judgment and post-judgement interest on all damages awarded based on their patent infringement;

5. NICE Ltd. and NICE Inc. pay to Witness Systems all costs it incurs in connection with this action;

6. This case be declared exceptional pursuant to 35 U.S.C. § 285 and that NICE Ltd. and NICE Inc. therefore pay to Witness Systems all attorneys' fees and other monetary compensation deemed appropriate; and

7. Witness Systems be granted such further and additional relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Witness Systems demands trial by jury on all claims and issues so triable.

Dated: this 19th day of January, 2006.

Respectfully submitted,



NAGENDRA SETTY

Georgia Bar No. 636205

DANIEL A. KENT

Georgia Bar No. 415110

CHRISTOPHER O. GREEN

Georgia Bar No. 037617

NOAH C. GRAUBART

Georgia Bar No. 141862

FISH & RICHARDSON P.C.

1230 Peachtree Street N.E.

19TH Floor

Atlanta, Georgia 30309

Ph: 404-892-5005

Fx: 404-892-5002

Counsel for Plaintiff

WITNESS SYSTEMS, INC.