

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

B.I. SYSTEMS LLC

Plaintiff,

v.

SAP AMERICA, INC.

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 6:10-cv-416

**JURY TRIAL DEMANDED**

**PLAINTIFF’S FIRST AMENDED COMPLAINT**

Plaintiff B.I. Systems LLC files this First Amended Complaint against SAP America, Inc., alleging as follows:

**I. THE PARTIES**

1. Plaintiff B.I. Systems LLC is a Texas limited liability company with its principle place of business in Frisco, Texas.

2. Defendant SAP America, Inc. (“SAP”) is a Delaware corporation with its principal place of business in Newtown Square, Pennsylvania. SAP may be served with process through its registered agent, Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801.

**II. JURISDICTION AND VENUE**

3. This is an action for infringement of a United States Patent arising under 35 U.S.C. §§ 271, 281, and 284-285, among others. This Court has subject matter jurisdiction of this action under 28 U.S.C. § 1331 and § 1338(a).

4. This Court has general and specific personal jurisdiction over SAP, and venue is proper, pursuant to 28 U.S.C. §§ 1391 and 1400(b). SAP has substantial contacts with this forum, including: (1) regularly conducting and soliciting business from residents of the State of Texas and this District; (2) engaging in other persistent courses of conduct in the State of Texas and this District; (3) deriving substantial revenue from goods and/or services provided to individuals residing in the State of Texas and this District; and/or (4) committing infringement, in whole or in part, as alleged herein, including making, using, selling and/or offering to sell products, systems and/or services that infringe the claims of United States Patent 5,894,311 in the State of Texas and this District.

5. On information and belief, SAP: (1) maintains business offices in Irving, Texas and Houston, Texas; (2) currently employs individuals who reside in the State of Texas and/or this District; (3) sells, offers for sale, and/or supports the sale of SAP products and/or services (including, but not limited to, SAP BusinessObjects applications) at or from its business offices in Irving, Texas and Houston, Texas; (4) provides or has provided SAP products and/or services (including, but not limited to, SAP BusinessObjects applications) to customers in this District, including Brookshire Grocery Company headquartered in Tyler, Texas; (5) through its University Alliances program, promotes use of SAP products and/or services (including, but not limited to, SAP BusinessObjects applications) by university students and/or faculty in this District, including students and/or faculty at the University of Texas at Tyler in Tyler, Texas, Lamar University in Beaumont, Texas, the University of North Texas in Denton, Texas, and the University of Texas at Dallas in Richardson, Texas; and/or (6) provides or assists in providing instruction regarding use of SAP products and/or services (including, but not limited to, SAP BusinessObjects applications) at training centers in Dallas, Texas.

### **III. PATENT INFRINGEMENT**

6. On April 13, 1999, United States Patent No. 5,894,311 (“the ’311 patent”) was duly and legally issued for a “Computer-Based Visual Data Evaluation.” On December 15, 2009, a certificate of correction was issued for the ’311 patent. A true and correct copy of the ’311 patent and certificate of correction is attached hereto as Exhibit A.

7. Plaintiff owns all substantial rights in and to the ’311 Patent, including the exclusive right to make, have made, use, import, offer or sell products or services covered by the ’311 Patent, to grant sublicenses, to sue for and collect past, present and future damages, and to seek and obtain injunctive or any other relief for infringement of the ’311 Patent.

8. SAP has had knowledge of the ’311 patent as a result of, at a minimum, receiving service of Plaintiff’s Original Complaint on August 17, 2010.

9. The inventions of the ’311 patent are generally directed to, among other things, methods and systems for computer-based visual data evaluation.

10. On information and belief, SAP imports, makes, uses, sells and/or offers for sale, in the United States, methods and/or systems for computer-based visual data evaluation that infringe the ’311 Patent, including, but not limited to SAP BusinessObjects Xcelsius (“Infringing Instrumentalities”). SAP also provides detailed demonstrations, explanations, instructions, and/or other information regarding how to use Infringing Instrumentalities. Such demonstrations, explanations, instructions, and/or other information are directed toward and written for SAP’s customers.

11. On information and belief, SAP has and continues to directly infringe at least claims 1 and 33 of the ’311 patent by testing (*i.e.*, using) Infringing Instrumentalities in the United States.

12. On information and belief, SAP has and continues to directly infringe at least claims 1 and 33 of the '311 patent by demonstrating, explaining, instructing, and/or teaching United States customers how to use Infringing Instrumentalities.

13. On information and belief, SAP has and continues to contributorily infringe the '311 patent by importing, selling, and/or offering to sell Infringing Instrumentalities in the United States to customers that use Infringing Instrumentalities to directly infringe the '311 patent. SAP has knowledge that Infringing Instrumentalities are a material component of, at least, claims 1 and 33 of the '311 patent, which claim “[a] method in a data processing system for accessing information in a data set . . .” and “[a] data processing system for accessing information in a data set . . .” respectively. SAP has knowledge that Infringing Instrumentalities are specialized products and are not staple articles suitable for substantial non-infringing uses. The Infringing Instrumentalities are specifically designed to infringe, at least, claims 1 and 33 of the '311 patent.

14. On information and belief, SAP has and continues to induce infringement of at least claims 1 and 33 of the '311 patent by knowingly advertising, teaching, publishing, instructing and/or otherwise providing its customers with detailed demonstrations, explanations, instructions, and/or other information promoting use of Infringing Instrumentalities in an infringing manner. These demonstrations, explanations, instructions, and/or other information instruct and actively induce SAP's customers to directly infringe, at least, claims 1 and 33 of the '311 patent.

15. Plaintiff has been damaged as a result of SAP's infringing conduct. SAP is, thus, liable to Plaintiff in an amount that adequately compensates it for their infringements, which, by law, cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. § 284.

**IV. JURY DEMAND**

Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

**IV. PRAYER FOR RELIEF**

Plaintiff requests that the Court find in its favor and against SAP, and that the Court grant Plaintiff the following relief:

- a. Judgment that one or more claims of United States Patent No. 5,894,311 have been infringed, either literally and/or under the doctrine of equivalents, by SAP and/or by others to whose infringement SAP has contributed and/or by others whose infringement has been induced by SAP;
- b. Judgment that SAP account for and pay to Plaintiff all damages to and costs incurred by Plaintiff because of SAP's infringing activities and other conduct complained of herein;
- c. That Plaintiff be granted pre-judgment and post-judgment interest on the damages caused by SAP's infringing activities and other conduct complained of herein;
- d. That this Court declare this an exceptional case and award Plaintiff its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and
- e. That Plaintiff be granted such other and further relief as the Court may deem just and proper under the circumstances.

**Dated: April 6, 2011**

Respectfully submitted,

/s/ Edward E. Casto, Jr.

Edward E. Casto, Jr.

Texas State Bar No. 24044178

NELSON BUMGARDNER CASTO, P.C.

3131 West 7<sup>th</sup> Street, Suite 300

Fort Worth, Texas 76107

(817) 377-9111

(817) 377-3485 (fax)

ecast@nbclaw.net

S. Brannon Latimer

Texas State Bar No. 24060137

Latimer Intellectual Property, PC  
P.O. Box 471430  
Fort Worth, TX 76147  
(469) 619-7291  
(972) 767-3320 (fax)  
brannon.latimer@latimeriplaw.com

T. John Ward, Jr.  
Texas State Bar No. 00794818  
Wesley Hill  
Texas State Bar No. 24032294  
WARD & SMITH LAW FIRM  
111 W. Tyler Street  
Longview, Texas 75601  
(903) 757-6400  
(903) 757-2323 (fax)  
jw@jwfirm.com  
wh@jwfirm.com

**ATTORNEYS FOR PLAINTIFF  
B.I. SYSTEMS LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of April, 2011, I electronically filed the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, Tyler Division, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Edward E. Casto, Jr.