

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

AMERICAN VIDEO GRAPHICS, L.P.,	§	
	§	
Plaintiff,	§	CIVIL ACTION
	§	
	§	6:05cv006 LED
vs.	§	
	§	
MICROSOFT CORPORATION,	§	JURY TRIAL
	§	
Defendant.	§	

**AMENDED COMPLAINT AGAINST SEVERED INTERVENOR
MICROSOFT CORPORATION**

Plaintiff American Video Graphics, L.P. (“AVG”), files this Amended Complaint against severed intervenor Microsoft Corporation (“Microsoft”) for infringement of U.S. Patent Nos. 4,694,286 (“the ’286 Patent”) and 4,761,642 (“the ’642 Patent”) (collectively, “the Patents-in-Suit”) under 35 U.S.C. § 271. Copies of each of the Patents-in-Suit are attached as Exhibits A & B.

BACKGROUND

This action is severed from, and is a continuation of, Civil Action No. 6:04-CV-397-LED, filed August 23, 2004. Microsoft intervened in that matter by way of its Complaint in Intervention filed on December 27, 2004. The Court issued an Order on January 13, 2005 severing all claims and defenses between AVG and Microsoft with regard to the ’642 and ’286 Patents, and ordering that such claims and defenses proceed separately in this action. AVG filed its original Complaint against Microsoft in accordance with the Court’s Order of January 13, 2005. AVG now files this Amended Complaint in accordance with this Court’s Docket Control Order.

PARTIES

1. Plaintiff AVG is a limited partnership, organized under the laws of the State of Texas. AVG maintains its principal place of business at 505 E. Travis Street, Suite 210, Marshall, Texas 75670.

2. Upon information and belief, Defendant Microsoft is, and at all times relevant herein was, a corporation organized under the laws of the State of Delaware, with its principal place of business at One Microsoft Way, Redmond, WA 98052. Microsoft manufactures for sale and/or sells computer software to consumers in the United States and, more particularly, in the Eastern District of Texas.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §1338(a).

4. This Court has personal jurisdiction over Microsoft. Microsoft has conducted and does conduct business within the State of Texas. Microsoft, directly or through intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises (including the provision of an interactive web page) its products in the United States, the State of Texas, and the Eastern District of Texas. Microsoft has purposefully and voluntarily placed one or more of its infringing products, as described below in Counts 1 & 2, into the stream of commerce with the expectation that they will be purchased by consumers in the Eastern District of Texas. These infringing products have been and continue to be purchased by consumers in the Eastern District of Texas. Microsoft has committed the tort of patent

infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

5. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

COUNT 1: INFRINGEMENT OF U.S. PATENT NO. 4,694,286

6. AVG refers to and incorporates herein the allegations of Paragraphs 1-5 above.

7. United States Patent No. 4,694,286 (“the ’286 Patent”), entitled “Apparatus and Method for Modifying Displayed Color Images,” was duly and legally issued by the United States Patent and Trademark Office on September 15, 1987, after full and fair examination. AVG is the assignee of all rights, title, and interest in and to the ’286 Patent and possesses all rights of recovery under the ’286 Patent.

8. Microsoft manufactures, uses and/or sells software, such as Windows XP, that includes software for modifying the color of pixels in a color image by enabling a user to (i) select a pixel in the image, (ii) enter new HLS values to specify a new color, and (iii) modify the selected pixel, and all pixels in the image associated with that pixel, to the newly specified color.

9. To facilitate international distribution of its accused products, Microsoft supplies a limited number of master versions of the Windows software to foreign computer manufacturers and authorized foreign “replicators,” who, pursuant to their licensing agreements with Microsoft, replicate the master versions in generating multiple copies of Windows for installation on foreign-assembled computers that are then sold to foreign customers. Microsoft creates the master versions in the United States and sends them abroad on so-called “golden master” disks or via electronic transmissions.

10. The master versions of the accused Windows products include the same software as described in Paragraph 8 herein.

11. By virtue of the foregoing, Microsoft is infringing one or more claims of the '286 Patent under 35 U.S.C. § 271 by performing, without authority, one or more of the following acts: (a) making, using, offering to sell, and selling within the United States the invention of one or more claims of the '286 Patent; (b) importing into the United States the invention of one or more claims of the '286 Patent; and (c) inducing infringement of one or more claims of the '286 Patent.

12. Microsoft is also infringing one or claims of the '286 Patent under 35 U.S.C. § 271(f) by supplying or causing to be supplied in or from the United States all or a substantial portion of the components of the patented invention, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States.

13. AVG has at all times complied with 35 U.S.C. § 287.

14. Microsoft has knowledge of the '286 Patent, and has not ceased its infringing activities. Microsoft's infringement of the '286 Patent has been and continues to be willful and deliberate.

15. As a result of Microsoft's acts of infringement, AVG has suffered and will continue to suffer damages in an amount to be proved at trial.

COUNT 2: INFRINGEMENT OF U.S. PATENT NO. 4,761,642

16. AVG refers to and incorporates herein the allegations of Paragraphs 1-15 above.

17. United States Patent No. 4,761,642 ("the '642 Patent"), entitled "System for Providing Data Communication Between a Computer Terminal and a Plurality of Concurrent

Processes Running on a Multiple Process Computer,” was duly and legally issued by the United States Patent and Trademark Office on August 2, 1988, after full and fair examination. AVG is the assignee of all rights, title, and interest in and to the '642 Patent and possesses all rights of recovery under the '642 Patent.

18. Microsoft manufactures, uses and/or sells operating systems, such as Windows XP, Windows 2000, Windows ME, and Windows 98. Microsoft's operating systems, in conjunction with integrated and/or included applications, such as Internet Explorer, display output from and receive user input to multiple concurrent processes using multiple windows.

19. The master versions of the accused Windows products include the same software as described in Paragraph 18 herein.

20. By virtue of the foregoing, Microsoft is infringing the '642 Patent under 35 U.S.C. § 271 by performing, without authority, one or more of the following acts: (a) making, using, offering to sell, and selling within the United States the invention of the '642 Patent; (b) importing into the United States the invention claimed in the '642 Patent; and (c) inducing infringement of the invention claimed in the '642 Patent.

21. Microsoft is also infringing the '642 Patent under 35 U.S.C. § 271(f) by supplying or causing to be supplied in or from the United States all or a substantial portion of the components of the patented invention, where such components are uncombined in whole or in part, in such manner as to actively induce the combination of such components outside of the United States in a manner that would infringe the patent if such combination occurred within the United States.

22. AVG has at all times complied with 35 U.S.C. § 287.

23. Microsoft has knowledge of the '642 Patent, and has not ceased its infringing activities. Microsoft's infringement of the '642 Patent has been and continues to be willful and deliberate.

24. As a result of Microsoft's acts of infringement, AVG has suffered and will continue to suffer damages in an amount to be proved at trial.

PRAYER FOR RELIEF

AVG prays for the following relief:

A. A judgment that Microsoft has infringed the Patents-in-Suit as alleged herein, directly and/or indirectly by way of inducing infringement of the Patents-in-Suit, as alleged herein;

B. A judgment and order requiring Microsoft to pay AVG damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284;

C. A judgment and order requiring Microsoft to pay AVG pre-judgment and post-judgment interest on the damages awarded;

D. A judgment and order finding this to be an exceptional case and requiring Microsoft to pay the costs of this action (including all disbursements) and attorneys' fees as provided by 35 U.S.C. § 285; and

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

DEMAND FOR JURY TRIAL

AVG hereby demands that all issues be determined by jury.

DATED: October 11, 2005

Respectfully submitted,

McKOOL SMITH, P.C.

/s/ Sam Baxter

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**ATTORNEYS FOR PLAINTIFF
AMERICAN VIDEO GRAPHICS, LP.**

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by U.S. mail, on this the 11th day of October, 2005.

/s/ Sam Baxter
Sam Baxter