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FILED
U. S. DISTRICT COURT
Eastern District of Texas

AUG 30 2004

DAVID MALAND, CLERK
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Jury Trial Requested

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- ## II

4. Defendant Interactive Brokers Group, L.L.C. ("Interactive Brokers") is organized under the laws of Connecticut. Interactive Brokers is an investment company in the business of brokering investments through their Internet service as evidenced by its web site located at www.interactivebrokers.com.

5. Defendant Instinet Corporation ("Instinet") is a Delaware corporation. Instinet is an investment company in the business of brokering investments through their Internet service as evidenced by its web site located at www.instinnet.com.

6. Defendant Charles Schwab & Co., Inc. ("Charles Schwab") is a California corporation. Charles Schwab is an investment company in the business of brokering investments through their Internet service as evidenced by its web site located at www.schwab.com.

7. CyberTrader, Inc. ("CyberTrader") is a Texas corporation. CyberTrader is an investment company in the business of brokering investments through their Internet service as evidence by its web site located at www.cybertrader.com.

8. Defendant E*Trade Securities, L.L.C. is a Delaware corporation ("E*Trade"). E*Trade is an investment company in the business of brokering investments through their Internet service as evidenced by its web site located at www.etrade.com.

9. TradeStation Securities, Inc. ("TradeStation") is a Florida corporation. TradeStation is an investment company in the business of brokering investments through their Internet service as evidence by its web site located at www.tradestation.com.

10. Defendant Terra Nova Trading, LLC ("Terra Nova") is an entity organized under the laws of Illinois. Terra Nova is an investment company in the business of brokering investments through their Internet service as evidenced by its web site located at www.terranoaonline.com. Terra Nova has over 100 customers in Texas and has engaged in

extensive business activity in Texas, including the purchase of another brokerage company in Texas.

Jurisdiction and Venue

11. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §§ 271 and 281-285. Jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1040 and 1338(a).

12. Venue is proper in this District under 28 U.S.C. §§ 1391(c) & 1400(b).

13. Fidelity maintains a website accessible via the Internet. Fidelity engages in commercial activity through its website. On information and belief, Fidelity enters into commercial relationships with individuals via the website. Fidelity repeatedly transmits data over the Internet to individuals with whom it has entered these relationships. Fidelity has appeared herein, thereby conceding that venue and personal jurisdiction are proper.

14. Scottrade maintains a website accessible via the Internet. Scottrade engages in commercial activity through its website. On information and belief, Scottrade enters into commercial relationships with individuals via the website. Scottrade repeatedly transmits data over the Internet to individuals with whom it has entered these relationships. Scottrade has appeared herein, thereby conceding that venue and personal jurisdiction are proper.

15. Interactive Brokers maintains a website accessible via the Internet. Interactive Brokers engages in commercial activity through its website. On information and belief, Interactive Brokers enters into commercial relationships with individuals via the website. Interactive Brokers repeatedly transmits data over the Internet to individuals with whom it has entered these relationships. Interactive Brokers has appeared herein, thereby conceding that venue and personal jurisdiction are proper.

16. Instinet maintains a website accessible via the Internet. Instinet engages in commercial activity through its website. On information and belief, Instinet enters into commercial relationships with individuals via the website. Instinet repeatedly transmits data over the Internet to individuals with whom it has entered these relationships. Instinet has also entered into multiple contracts, undertaken numerous legal obligations, and performed those obligations, in the Eastern District of Texas.

17. Charles Schwab maintains a website accessible via the Internet. Charles Schwab engages in commercial activity through its website. On information and belief, Charles Schwab enters into commercial relationships with individuals via the website. Charles Schwab repeatedly transmits data over the Internet to individuals with whom it has entered these relationships. Charles Schwab has appeared herein, thereby conceding that venue and personal jurisdiction are proper.

18. CyberTrader maintains a website accessible via the Internet. CyberTrader engages in commercial activity through its website. On information and belief, CyberTrader enters into commercial relationships with individuals via the website. CyberTrader repeatedly transmits data over the Internet to individuals with whom it has entered these relationships. CyberTrader has appeared herein, thereby conceding that venue and personal jurisdiction are proper.

19. E*Trade maintains a website accessible via the Internet. E*Trade engages in commercial activity through its website. On information and belief, E*Trade enters into commercial relationships with individuals via the website. E*Trade repeatedly transmits data over the Internet to individuals with whom it has entered these relationships. E*Trade has appeared herein, thereby conceding that venue and personal jurisdiction are proper.

20. TradeStation maintains a website accessible via the Internet. TradeStation engages in commercial activity through its website. On information and belief, TradeStation enters into commercial relationships with individuals via the website. TradeStation repeatedly transmits data over the Internet to individuals with whom it has entered these relationships. TradeStation has appeared herein, thereby conceding that venue and personal jurisdiction are proper.

21. Terra Nova maintains a website accessible via the Internet. Terra Nova engages in commercial activity through its website. On information and belief, Terra Nova enters into commercial relationships with individuals via the website. Terra Nova repeatedly transmits data over the Internet to individuals with whom it has entered these relationships. Terra Nova has no fewer than 127 customers in Texas. And as set forth below, Terra Nova has offered to sell infringing products and services, and has induced infringement, in the Eastern District of Texas.

22. Defendants are transacting business and have committed acts of patent infringement within the State of Texas and this District. Defendants are therefore subject to the personal jurisdiction of this Court.

Operative Facts

23. On October 1, 2002, the U.S. Patent and Trademark Office duly and legally issued United States Patent No. 6,460,040 (the “‘040 Patent”) to Kevin S. Burns. On December 2, 2003, the U.S. Patent and Trademark Office duly and legally issued United States Patent No. 6,658,418 (the ‘418 Patent) to Kevin S. Burns. Datamize is the owner by assignment of the ‘040 and ‘418 Patents, copies of which are attached as Exhibit A and Exhibit B, respectively.

24. Defendants are brokerage firms that provide online trading platforms and services to their customers. Certain of these online trading platforms and services infringe the '040 and '418 Patents.

Count One—Patent Infringement

25. Datamize has complied with the marking requirements of 35 U.S.C. § 287.

26. Defendants have infringed and continue to infringe the '040 and '418 Patents, either directly or indirectly through acts of contributory infringement or inducement, by making, using, selling, and/or offering online trading platforms in violation of 35 U.S.C. § 271.

Remedies

27. Datamize has been irreparably harmed as a result of Defendant's infringing activities, and will continue to be damaged unless this Court enjoins such activities.

28. Datamize has suffered actual damages as a result of Defendant's infringement. Pursuant to 35 U.S.C. § 284, Datamize is entitled to damages.

29. On information and belief, Defendants' infringement is willful and occurred with knowledge of the '040 and '418 Patents. This is an exceptional case pursuant to 35 U.S.C. § 285.

30. Datamize will be irreparably harmed if Defendant's patent infringement continues. Datamize therefore requests, upon trial of this matter, a permanent injunction prohibiting Defendants, their directors, officers, employees, agents, parents, subsidiaries, affiliates, and anyone else in active concert or participation with them, from taking any actions that would infringe the '040 and '418 Patents.

Jury Demand

31. Plaintiffs request a jury trial of all issues in this action so triable.

WHEREFORE, Plaintiff Datamize respectfully requests that the Court grant it the following relief:

(a) a permanent injunction restraining Defendants and their directors, officers, employees, agents, parents, subsidiaries, affiliates, and all persons in active concert or participation with them from further acts of infringement of the '040 and '418 Patents;

(b) actual damages;

(c) enhanced damages pursuant to 35 U.S.C. § 284;

(d) attorneys fees;

(e) costs of court;

(f) an award of prejudgment interest from the date of each act of infringement of the '040 and '418 Patents by Defendant to the day a damages judgment is entered, and a further award of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid, at the maximum rate allowed by law;

(g) such other and further relief as this Court finds justified.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served on the following counsel of record via electronic service and certified mail, return receipt requested on the 15th day of April, 2004:

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