

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

Charles E. Hill & Associates, Inc.,	)	
Plaintiff,	)	
	)	
v.	)	
1. Amazon.com, Inc.,	)	Jury Trial Requested
2. America Online, Inc.,	)	
3. Barnesandnoble.com Inc.,	)	
4. Buy.com Inc.,	)	
5. eBay Inc.,	)	
6. EddieBauer, Inc.,	)	2:02-CV-186 TJW
7. The Gap, Inc.,	)	
8. International Business Machine Corp.,	)	
9. Intimate Brands, Inc.,	)	
10. J. Crew Group, Inc.,	)	
11. L.L. Bean, Inc.,	)	
12. Lands' End, Inc.,	)	
13. Limited Brands, Inc.,	)	
14. Quixtar Inc.,	)	
15. Recreation Equipment, Inc.,	)	
16. Sears Roebuck and Co.,	)	
17. Spiegel, Inc., and	)	
18. Williams-Sonoma, Inc.,	)	
19. Victoria's Secret Direct, L.L.C.	)	
20. Recreational Equipment, Inc.	)	
Defendants.	)	

PLAINTIFF'S FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

The Plaintiff, Charles E. Hill & Associates, Inc. ("Hill") files this First Amended Complaint for Patent Infringement against the Defendants, Amazon.com, Inc., America Online, Inc., Barnesandnoble.com Inc., Buy.com Inc., eBay Inc., Eddie Bauer, Inc., The Gap, Inc., International Business Machine Corp. (IBM Corp.), Intimate Brands, Inc., J. Crew Group, Inc., L.L. Bean, Inc., Lands' End, Inc., Limited Brands, Inc., Quixtar Inc., Recreation Equipment, Inc., Sears, Roebuck And Co., Spiegel, Inc., Williams-Sonoma, Inc., and Victoria's Secret Direct, L.L.C, and Recreational Equipment Inc. (collectively, the "Defendants").

PARTIES

1. Charles E. Hill & Associates, Inc. ("Hill") is a Delaware Corporation that has an office and has conducted business in the Eastern District of Texas at 2660 East End Blvd., Suite #108, Marshall, TX 75672.

2. Hill is in the business of computer software and computer consulting. Hill offers both software and services to its clients as well as intellectual property licenses to the patents it owns.

3. Amazon.com, Inc. is a corporation organized and existing under the laws of the State of Washington and maintains its principal place of business at 1200 12th Ave. South, Ste. 1200, Seattle, WA 98144.

4. America Online, Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 22000 America Online Way, Dulles, VA 20166.

5. Barnesandnoble.com Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 76 9th Avenue, New York, NY 10011.

6. Buy.com Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 85 Enterprise, Aliso Viejo, CA 92656.

7. eBay Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 2145 Hamilton Ave., San Jose, CA 95125.

8. Eddie Bauer, Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 15010 NE 36th St., Redmond WA 98052.

9. The Gap, Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 2 Folsom St., San Francisco, CA 94105.

10. International Business Machine Corp. is a corporation organized and existing under the laws of the State of New York and maintains its principal place of business at New Orchard Road, Armonk, NY 10504.

11. Intimate Brands, Inc., is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 3 Limited Pkwy., Columbus, OH 43216.

12. J. Crew Group, Inc., is a corporation organized and existing under the laws of the State of New York and maintains its principal place of business at 770 Broadway, New York, NY 10003

13. L.L. Bean, Inc. is a corporation organized and existing under the laws of the State of Maine and maintains its principal place of business at Casco St, Freeport, ME 04033.

14. Lands' End, Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at Lands' End Ln, Dodgeville, WI 53595.

15. Limited Brands, Inc., is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 3 Limited Pkwy., Columbus, OH 43216.

16. Quixtar Inc. is a corporation organized and existing under the laws of the State of Michigan and maintains its principal place of business at 7575 Fulton St. East, Ada, MI 49355.

17. Recreation Equipment, Inc. is a corporation organized and existing under the laws of the State of Washington and maintains its principal place of business at 6750 S. 228th St., Kent, WA, 98032.

18. Sears Roebuck and Co. is a corporation organized and existing under the laws of the State of New York and maintains its principal place of business at 3333 Beverly Road, Hoffman Estates, IL 60179.

19. Spiegel, Inc. is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 3500 Lacey Rd., Downers Grove, IL 60515.

20. Williams-Sonoma, Inc. is a corporation organized and existing under the laws of the State of California and maintains its principal place of business at 3250 Van Ness Ave., San Francisco, CA 94109.

21. Victoria's Secret Direct L.L.C. is organized and exists under the laws of the State of Delaware, and maintains its principal place of business at 3425 Morse Crossing, Columbus, Ohio 43219.

22. Recreational Equipment, Inc. is a corporation organized and existing under the laws of the State of Washington and maintains its principal place of business at Recreational Equipment, Inc., P.O. Box 1938, Sumner, Washington 98390.

23. On information and belief, each Defendant is in the business of selling or offering for sale goods and/or services over the Internet.

JURISDICTION AND VENUE

24. 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).

25. This Court has personal jurisdiction over each of the Defendants. Defendants have conducted and do conduct business within the State of Texas and the Eastern District of Texas. Each Defendant owns and operates a website that is accessible from the Eastern District of Texas and that infringes one or more claims of the Patents In Suit. Further, Defendants have contributed to and induced acts of infringement in the Eastern District of Texas. Further, on information and belief, the Defendants, directly or through intermediaries (including distributors, dealers, resellers, and others), ship, distribute, offer for sale, sell, and advertise their products and/or services in the United States, including the Eastern District of Texas. The Defendants have committed the tort of patent infringement within the State of Texas and the Eastern District of Texas.

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

PATENT INFRINGEMENT

27. Hill owns all of the rights and interests in United States Patent Nos. 5,528,490 ("the '490 Patent"), 5,761,649 ("the '649 Patent") and 6,029,142 ("the '142

Patent")(collectively, the "Patents In Suit"). True and accurate copies of the '490 Patent, the '649 Patent and the '142 Patent are attached hereto as Exhibits A, B, and C, respectively.

THE '490 PATENT

28. The '490 Patent was duly and legally issued by the United States Patent and Trademark Office on June 18, 1996 after full and fair examination.

29. The '490 Patent relates to an electronic catalog system and method for, among other things, producing information related to a selected product on a remote computer.

30. The Defendants are infringing the '490 Patent by importing into the United States, and/or making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas, products and/or services embodying the patented inventions claimed in the '490 Patent without authority.

31. The Defendants are actively, intentionally, and/or knowingly inducing or contributing to this infringement of the '490 Patent by others.

THE '649 PATENT

32. The '649 Patent was duly and legally issued by the United States Patent and Trademark Office on June 2, 1998 after full and fair examination.

33. The '649 Patent relates to a method for updating a remote computer.

34. The Defendants are infringing the '649 Patent by importing into the United States, and/or making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas, products and/or services embodying the patented inventions claimed in the '649 Patent without authority.

35. The Defendants are actively, intentionally, and/or knowingly inducing or contributing to this infringement of the '649 Patent by others.

THE `142 PATENT

36. The '142 Patent was duly and legally issued by the United States Patent and Trademark Office on February 22, 2000 after full and fair examination.

37. The '142 Patent relates to an electronic catalog system and method for, among other things, displaying product information data.

38. The Defendants are infringing the '142 Patent by importing into the United States, and/or making, using, selling, or offering for sale in the United States, including in the Eastern District of Texas, products and/or services embodying the patented inventions claimed in the '142 Patent without authority.

39. The Defendants are actively, intentionally, and/or knowingly inducing or contributing to this infringement of the '142 Patent by others.

40. Defendants' infringement of the '490 Patent, the '649 Patent and the '142 Patent are willful and deliberate, making this case exceptional within the meaning of 35 U.S.C. § 285 and justifying treble damages pursuant to 35 U.S.C. § 284.

41. On information and belief, the Defendants will continue to infringe the `490 Patent, the `649 Patent, and the `142 Patent, causing immediate and irreparable harm unless this Court enjoins and restrains the Defendants' activities.

42. On information and belief, the infringement by Defendants has and will deprive Hill of sales, profits, and other related revenue which Hill would have made or would enjoy in the future, has injured Hill in other respects, and will cause Hill added injury and damage, including loss of sales, profits, and other related revenue in the future unless Defendants are enjoined from infringing the `490 Patent, the `649 Patent, and the `142 Patent.

43. Prior to the filing of this action, Hill has complied with 35 U.S.C. § 287(a) by marking products made under the `490 Patent, the `649 Patent and/or the '142 Patent and/or

providing notice to Defendants of its infringement of the `490 Patent, the `649 Patent and/or the '142 Patent.

WHEREFORE, the Plaintiff, Charles E. Hill & Associates, Inc., respectfully requests that this Court enter judgment in its favor as follows:

- (a) that U.S. Patent Nos. 5,528,490, 5,761,649, and 6,029,142 are valid, enforceable, and infringed by the Defendants;
- (b) a permanent injunction against Defendants enjoining them, their directors, officers, agents, employees, successors, subsidiaries, assigns, and all persons acting in privity or in concert or participation with Defendants from making, using, selling, or offering for sale in the United States, or importing into the United States, any and all products and/or services embodying the patented inventions claimed in the `490 Patent, the `649 Patent and the `142 Patent;
- (c) awarding such damages to Hill to which it is entitled;
- (d) awarding enhanced damages for willful infringement;
- (e) awarding Hill pre-judgment and post judgment interest as allowed by law;
- (f) awarding Hill its costs, expenses, and fees, including reasonable attorneys' fees pursuant to 35 U.S.C. § 285; and,
- (g) awarding such other relief as the Court deems just and proper.

REQUEST FOR TRIAL BY JURY

Charles E. Hill & Associates, Inc. respectfully requests that all issues so triable be tried by and before a jury.

Respectfully submitted,

/s/ Sam Baxter

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served upon all counsel of record on this 16th day of December, 2004.

/s/ Sam Baxter

Sam Baxter

Counsel for Amazon.com, Buy.com, Inc., eBay, Inc., Eddie Bauer, Inc., The Gap, Inc., Intimate Brands, Inc., J Crew Group, Inc., L.L. Bean, Inc., Lands' End, Inc., Recreational Equipment, Inc., Sears Roebuck and Co., Spiegel, Inc., Recreation Equipment Inc., Victoria's Secret Direct, L.L.C., and Williams-Sonoma, Inc.

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