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

MEDIOSTREAM, INC., a California Corporation, Plaintiff, v. MICROSOFT CORPORATION, a Washington Corporation, Defendant.	§	Civil Action No. 2-08CV-369 **COMPLAINT** **JURY TRIAL DEMANDED**

COMPLAINT

Plaintiff MEDIOSTREAM, INC. for its Complaint against Defendant MICROSOFT CORPORATION ("Microsoft"), alleges:

THE PARTIES

1. Plaintiff MedioStream, Inc. ("MedioStream") is a California corporation that maintains its principal place of business at 4962 El Camino Real, Suite 201, Los Altos, CA 94022.

2. Upon information and belief, defendant Microsoft is a Washington corporation with its principal place of business at One Microsoft Way, Redmond, WA 98052-6399.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35, United States Code §§1 *et seq.* The jurisdiction of this Court over the subject matter of this action is proper under 28 U.S.C. §§1331 and 1338(a).

4 The personal jurisdiction of this Court over defendant Microsoft in this case is proper because, on information and belief, Microsoft, through various commercial arrangements has engaged in continuous and systematic activities within the State of Texas by *inter alia*, placing computer products which infringe MedioStream's patents into the stream of commerce, which stream is directed at the State of Texas, including this district, with the knowledge and/or understanding that such products would be sold in the State of Texas, including this district.

5. As set forth below, Plaintiff's claims for misappropriation of trade secrets, conversion, unjust enrichment and unfair competition violate California statutory and common law.

6 This Court has subject matter jurisdiction over state law causes of action under 28 U.S.C § 1332(a)(2).

7. Venue is proper in this Court under 28 U.S.C §§ 1391(b) and (c) and 1400(b).

BACKGROUND FACTS

8. Between 1999 and 2002 MedioStream introduced products that created substantial excitement in the computer industry, especially among companies interested in multimedia computer applications including streaming video from the Internet and recoded video on disk media such as CDs and DVDs. MedioStream's early products received substantial media attention, followed by some of the worlds leading computer hardware and software companies contacting MedioStream regarding its technology and the capabilities of its products.

9. Mediosteam is the owner of patents that cover the above described technology.

10. Upon information and belief, Microsoft engages in commercial activities related to the manufacture, development, sale, offers to sell and importation into the United States, including this district, a variety of software products that infringe Mediostream's patents.

COUNT 1
Patent Infringement
(US Patent No. 7,009,655)

11. On March 7, 2006, United States Patent No. 7,009,655 (the "'655 patent") was duly and legally issued to MedioStream, Inc , with Qiang Huang named as inventor, for an invention entitled "Method and System For Direct Recording of Video Information Onto A Disk Medium." By assignment, MedioStream is the owner of all rights, title, and interests in the '655 patent. A copy of the '655 patent is attached to this complaint as Exhibit A

12. Upon information and belief, Microsoft has infringed and continues to infringe the '655 patent by engaging in commercial activities related to the manufacture, development, sale, offers to sell and importation into the United States, including this district, a variety of electronic products and software applications covered by the '655 patent, and is contributing to and inducing others to manufacture, use, sell, import, and/or offer for sale products covered by the '655 patent. Microsoft is liable for its infringement of the '655 patent pursuant to 35 U.S.C. § 271.

13. MedioStream has been damaged by the infringement or inducement of and/or contributory infringement of its patents by Microsoft and will continue to be damaged by such infringement or inducement of and/or contributory infringement unless enjoined by this Court.

14. Upon information and belief, Microsoft had knowledge of its infringement of the '655 patent, yet Microsoft continues to infringe. Microsoft willfully and deliberately infringed the '655 patent – entitling MedioStream to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT 2
Patent Infringement
(US Patent No.7,283,172)

15. On October 16, 2007, United States Patent No. 7,283,172 (the "'172 patent") was duly and legally issued to MedioStream, Inc., with Qiang Huang named as inventor, for an invention entitled "Method and System For Direct Recording of Video Information Onto A Disk Medium." By assignment, MedioStream is the owner of all rights, title and interests in the '172 patent. A copy of the '172 patent is attached to this complaint as Exhibit B.

16. Upon information and belief, Microsoft has infringed and continues to infringe the '172 patent by engaging in commercial activities related to the manufacture, development, sale, offers to sell and importation into the United States, including this district, a variety of electronic products and software applications covered by the '172 patent, and is contributing to and inducing others to manufacture, use, sell, import, and/or offer for sale products covered by the '172 patent. Microsoft is liable for its infringement of the '172 patent pursuant to 35 U.S.C. § 271.

17. MedioStream has been damaged by the infringement or inducement of and/or contributory infringement of its patents by Microsoft and will continue to be damaged by such infringement or inducement of and/or contributory infringement unless enjoined by this Court.

18. Upon information and belief, Microsoft had knowledge of its infringement of the '172 patent, yet Microsoft continues to infringe. Microsoft willfully and deliberately infringed the '172 patent –entitling MedioStream to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

JURY DEMAND

19. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff MedioStream hereby demands a trial by jury on all issues triable of right by a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MedioStream, Inc. requests entry of judgment in its favor and against Microsoft as follows:

a) A temporary and permanent injunction against Microsoft and its respective officers, agents, employees, and those acting in privity with it, from further infringement, contributory infringement and/or inducing infringement of U.S. Patent No. 7,009,655;

b) Awarding the damages arising out of Microsoft's infringement or inducement of and/or contributory infringement of U.S. Patent No. 7,009,655 to MedioStream, including enhanced damages pursuant to 35 U.S.C. § 284, together with prejudgment and post-judgment interest, in an amount according to proof;

c) A temporary and permanent injunction against Microsoft and its respective officers, agents, employees, and those acting in privity with it, from further infringement, contributory infringement, and/or inducing infringement of U.S. Patent No. 7,283,172;

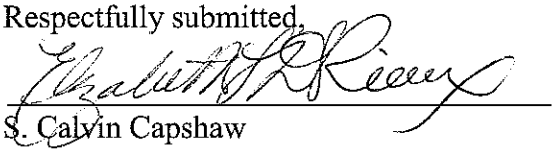
d) Awarding the damages arising out of Microsoft's infringement or inducement and/or contributory infringement of U.S. Patent No. 7,283,172 to MedioStream, including enhanced damages, pursuant to 35 U.S.C. § 284, together with pre-judgment and post-judgment interest, in an amount according to proof;

e) Declaration that this is an exceptional case and MedioStream be awarded its costs and reasonable attorneys' fees incurred in this action as provided by 35 U.S.C. § 285 or as otherwise permitted by law; and

f) Such other and further relief as the Court deems just and proper.

Dated: September 30, 2008

Respectfully submitted,

By: 

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