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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

MICROSOFT CORPORATION,

Plaintiff,

v.

WEBXCHANGE INC.,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT OF:

1) PATENT UNENFORCEABILITY,

2) PATENT INVALIDITY,

3) NON-INFRINGEMENT

Plaintiff Microsoft Corporation ("Microsoft") brings this action against WebXchange Inc. ("WebXchange") for a declaratory judgment of patent invalidity, unenforceability and non-infringement.

INTRODUCTION

1. Microsoft publishes and licenses Visual Studio software enabling customers to develop and use a wide variety of computer applications. Visual Studio includes a Web service project template to help developers create "Web services." Web services can be used to allow users to perform interactive, real-time transactions over the World Wide Web and Internet, such as on-line banking and shopping. Microsoft's Visual Studio software provides Web services developers with tools to support use of the Simple Object Access Protocol ("SOAP") in their Web services.

2. WebXchange has placed a cloud over Visual Studio software, Web services, and the SOAP protocol by asserting patents ("the patents in suit") against Microsoft customers for their uses of Web services created using Microsoft's Visual Studio software.

3. WebXchange has alleged a broad scope for these patents, asserting to Microsoft that the patents in suit cover "any real-time transaction on the [Inter]net."

4. WebXchange has already sued three Microsoft customers (Del. D. Ct. Civil Action Nos. 08-131 JJF through 08-133 JJF, hereafter referred to as the "Delaware Lawsuits"). All three have sought indemnification from Microsoft. On information and belief, WebXchange has alleged in the Delaware Lawsuits that use of the SOAP protocol in real-time transactions infringes the patents in suit. On information and belief, WebXchange has also alleged in the Delaware Lawsuits that SOAP-based systems other than those of the defendants in the Delaware Lawsuits infringe the patents.

5. Microsoft is facing potential indemnification demands from additional customers who are sued by WebXchange for patent infringement in the future.

6. Despite WebXchange's broad allegations and despite its suing Microsoft's customers and placing this cloud over Microsoft's Visual Studio software, Web services, and the SOAP

protocol, WebXchange has refused Microsoft's recent entreaties to its counsel to discuss the current disputes and any future potential disputes.

7. WebXchange's strategy of accusing Microsoft's customers one at a time, and refusing to deal with Microsoft, will force Microsoft to expend a disproportionate amount of resources responding to individual customer indemnification demands. WebXchange's strategy, if allowed to continue, will also burden the Courts with a large number of suits when the issues could be resolved in this single suit.

8. The patents in suit are invalid and were obtained by misleading the Patent Office, and no valid claim is infringed by Microsoft's licensing and publication of the Visual Studio software.

9. The relief requested by Microsoft in this action will completely resolve the controversies between WebXchange and Microsoft and between WebXchange and the many Microsoft customers involved in Internet transactions.

THE PARTIES

10. Plaintiff Microsoft is a Washington corporation having its principal place of business at One Microsoft Way, Redmond, Washington 98052. Microsoft has major facilities and thousands of employees in this District.

11. On information and belief, throughout the time period in question in this action, WebXchange's principal place of business has been and still is in this District at 222 Stanford Avenue, Menlo Park, California 94025. The only physical address provided on WebXchange's web page, www.webxchange.com, is an address in this District, 222 Stanford Avenue, Menlo Park, California 94025.

12. Throughout the time period in question in this action, Lakshmi Arunachalam, WebXchange's founder and chief executive officer and the patent applicant on the three patents asserted against Microsoft's customers and challenged in this suit, has been and still is a resident of this District.

JURISDICTION AND VENUE

13. Microsoft realleges and incorporates paragraphs 1 to 12 as if fully set forth herein.

14. This action arises under the patent laws of the United States, Titles 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

15. This Court may enter the declaratory relief sought because this case presents an actual controversy and is within this Court's jurisdiction pursuant to 28 U.S.C. § 2201.

16. WebXchange has claimed to be the owner of U.S. Patent Nos. 5,778,178 (the "'178 Patent"), 6,212,556 (the "'556 Patent"), and 7,340,506 (the "'506 Patent") (collectively, the "Patents in Suit"). True and correct copies of the Patents in Suite are attached hereto as Exhibits A, B, and C.

17. WebXchange has taken the position that the Patents in Suit cover "any real-time transaction on the net," and, on information and belief, has alleged in the Delaware Lawsuits that use of the SOAP protocol in real-time transactions infringes the Patents in Suit.

18. At least thousands of Microsoft customers use Microsoft's Visual Studio software to create software, products and services that offer Web services and enable real-time transactions on the Internet, including transactions that make use of the SOAP protocol. A substantial number of Microsoft customers use software, products and services that were created using Microsoft's Visual Studio software and that offer Web services and enable real-time transactions on the Internet, including transactions that make use of the SOAP protocol. These Microsoft customers are potential targets of WebXchange's expansive infringement allegations. Indeed, on information and belief, WebXchange has specifically alleged in the Delaware Lawsuits that SOAP-based systems other than those of the defendants in the Delaware Lawsuits infringe the Patents in Suit.

19. It is one of Microsoft's goals to protect its customers as much as is reasonably possible against claims of patent infringement citing use of Microsoft's software. As a result, many of Microsoft's software offerings and services are accompanied by Microsoft's agreement to defend and indemnify its customers against various types of patent infringement allegations. Microsoft's willingness to stand behind its offerings is advertised on its web site at, for example, http://www.microsoft.com/iplicensing/IPindemnification.aspx.

20. Customers accused of infringement by WebXchange have sought to have Microsoft defend and indemnify them against WebXchange's allegations.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment of Unenforceability)

21. Microsoft realleges and incorporates paragraphs 1 to 20 as if fully set forth herein.

22. In prosecuting the patent applications which led to the Patents in Suit, patent applicant Arunachalam had a duty of candor and good faith in dealing with the U.S. Patent and Trademark Office ("PTO"), which included a duty to disclose to the PTO all information known to her to be material to patentability.

23. On information and belief, patent applicant Arunachalam drafted and/or reviewed in this judicial district the patent applications which led to the '178, '556, and '506 Patents ("WebXchange Patent Applications"), and made her decisions and communications about the prosecution of these applications—and what information to provide or withhold from the PTO—in this District. Some of the attorneys who assisted Arunachalam with the preparation and prosecution of one or more of the WebXchange Patent Applications were located in Palo Alto, California, in this District.

Arunachalam's Copying from Prior Art
Internet Standards, and Concealment Thereof

24. Concepts and even text in the WebXchange Patent Applications were copied from prior art references.

25. On information and belief, patent applicant Arunachalam either did that copying herself or, at the very least, was aware of such copying prior to or during the prosecution of the WebXchange Patent Applications.

26. Patent applicant Arunachalam did not disclose those prior art references to the PTO or tell the PTO that portions of the WebXchange Patent Applications had been copied from those prior art references.

27. For example, in the early 1990s, the Internet Activities Board published the following as full Internet Standards:

- SMI RFC-1155 ("Structure and Identification of Management Information for TCP/IP-based Internets"), which was published in May 1990,
- MIB II RFC-1213 ("Management Information Base for Network Management of TCP/IP-based Internets"), which was published in March 1991, and
- SNMP RFC-1157 ("A Simple Network Management Protocol (SNMP)"), which was published in May 1990.

28. Many of the concepts presented in the Patents in Suit as being the invention of Arunachalam in fact were published in these Internet Standards in 1990 and 1991.

29. On information and belief, Arunachalam was aware of these Internet Standards by no later than 1994.

30. The WebXchange Patent Applications included concepts and even text copied from these prior art published Internet Standards, but Arunachalam did not disclose that copying to the PTO.

31. For example, in the table below is text from RFC 1213 (published March 1991) and counterpart text from the WebXchange Patent Applications, including issued claims (emphasis added to highlight words and sentences copied verbatim or nearly so from the RFC specification):

RFC 1156 Excerpts	**'178 Patent Excerpts**
Managed objects are accessed via a virtual information store, termed the Management Information Base or MIB. Objects in the MIB are defined using Abstract Syntax Notation One (ASN.1) [8] defined in the [Internet standard] SMI. In particular, each object has a name, a syntax, and an encoding. The name is an object identifier, an administratively assigned name, which specifies an object type. The object type together with an object instance	DOLSIBs are virtual information stores optimized for networking. …. Each object in the DOLSIB has a name, a syntax and an encoding. The name is an administratively assigned object ID specifying an object type. The object type together with the object instance serves to uniquely identify a specific instantiation of the object. ….. The syntax of an object type defines the abstract data structure corresponding to that object type. Encoding

serves to uniquely identify a specific instantiation of the object. For human convenience, we often use a textual string, termed the OBJECT DESCRIPTOR, to also refer to the object type. The syntax of an object type defines the abstract data structure corresponding to that object type. The ASN.1 language is used for this purpose. However, the SMI [12] purposely restricts the ASN.1 constructs which may be used. These restrictions are explicitly made for simplicity. The encoding of an object type is simply how that object type is represented using the object type's syntax. Implicitly tied to the notion of an object type's syntax and encoding is how the object type is represented when being transmitted on the network. The SMI specifies the use of the basic encoding rules of ASN.1 [9], subject to the additional requirements imposed by the SNMP.	of objects defines how the object is represented by the object type syntax while being transmitted over the network. 12. A method for enabling object routing on the World Wide Web, said method for enabling object routing comprising the steps of: creating a virtual information store containing information entries and attributes; .... 15. The method claim 12 wherein said step of associating each of said information entries and said attributes with said object identity further includes the step of storing a name, a syntax and an encoding for each of said object identities. 16. The method in claim 15 wherein said name of said object identity specifies an object type.

32. These Internet Standards, and the fact that content in the WebXchange Patent Applications (including content repeated in some of the claims) was copied from these standards, constituted highly material information that a reasonable PTO Examiner would have considered important in deciding patentability.

33. Yet, Arunachalam intentionally withheld this information from the PTO. On information and belief, Arunachalam withheld this information with the intention of deceiving the PTO into believing that she had invented these concepts, knowing that in fact they had been copied from elsewhere.

Arunachalam's Concealment of Prior Art
Published International Application No. PCT/US96/18165

34. Applicant Arunachalam also intentionally concealed from the PTO other material information.

35. The application that issued as the '556 Patent (the "'556 Continuation-In-Part Application") was filed on April 21, 1999, as a continuation-in-part of an earlier application, but claimed priority to the August 5, 1996 application which issued as the '178 Patent. The application that issued as the '506 Patent (the "'506 Application) was filed on February 23, 2001, as a "divisional" of the application that issued as the '556 Patent.

36. The '556 Continuation-In-Part Application and the '506 Application each contained matter which had not been disclosed in the 1996 application which issued as the '178 Patent ("New Matter").

37. On information and belief, Arunachalam knew in prosecuting the '556 Continuation-In-Part Application and the '506 Application that she was obligated to disclose to the PTO Examiner information published before April 21, 1998 that was material to the patentability of claims not entitled to a filing date earlier than April 21, 1999, and in this District signed a declaration acknowledging that obligation.

38. On October 30, 2000, Arunachalam filed new application claims in the '556 Continuation-In-Part Application, at least some of which were not described in any ancestor application to the '556 Continuation-In-Part Application.

39. One or more claims submitted during the prosecution of the '506 Application and one or more claims of the issued '506 Patent were not described in any application Arunachalam filed prior to the April 21, 1999 parent application.

40. For example, the following '556 Continuation-In-Part Application claims 78 and 84, filed on October 30, 2000, were not entitled to an effective filing date earlier than April 21, 1999:

- "78. (New) The method of claim 67 further including executing the transaction in a distributed computing environment, including creating a plurality of skeleton objects on a computer system remote to the user, registering the plurality of skeleton objects in a name server associated with the remote computer system, and transferring one or more stub

objects to a computer system local to the user, wherein the one or more stub objects are derived from the plurality of skeleton objects." and

- "84. (New) The machine-readable medium of claim 80, wherein the instructions further comprise instructions causing the machine to execute the transaction in a distributed computing environment, including instructions to create a plurality of skeleton objects on a computer system remote to the user, register the plurality of skeleton objects in a name server associated with the remote computer system, and transfer one or more stub objects to a computer system local to the user, wherein the one or more stub objects are derived from the plurality of skeleton objects."

41. For example, the following '506 Application claims 74 and 75, filed on February 23, 2001, were not entitled to an effective filing date earlier than April 21, 1999:

- "74. A method comprising: creating a virtual information store containing information entries and attributes; associating each of the information entries and the attributes with a software object identity; describing events and actions of a software object identified by the software object identity using a DOLSIB language construct; and interpreting the DOLSIB language construct describing the events and actions of the software object." and
- "75. The method of claim 74, wherein creating includes creating a virtual information store including the information entries and attributes for each of a plurality of geographically distributed networked software objects including the software object, the virtual information store including a network address for each of the plurality of geographically distributed networked software objects."

42. On information and belief, Arunachalam knew when she filed the four application claims (78, 84, 74 and 75) quoted above in paragraphs 39-40 that their recited methods had not been disclosed in any of her applications filed before April 21, 1999.

43. On May 22, 1997, International Application No. PCT/US96/18165 (naming Lakshmi Arunachalam as the alleged inventor) ("International Application") was published as International Publication No. WO 97/18515. The International Application is entitled, "A method and apparatus for configurable value-added network (VAN) switching and object routing."

44. The disclosure of the International Application is nearly identical to the '178 Patent specification.

45. The International Application was published more than one year before April 21, 1999, and therefore is prior art to any claim of the '556 Patent or '506 Patent entitled to an effective filing date no earlier than April 21, 1999.

46. The International Application was material to the patentability of the four application claims (78, 84, 74 and 75) quoted above in paragraphs 39-40 and the other claims of the '556 Continuation-In-Part Application and '506 Application which are not entitled to an effective filing date before April 21, 1999.

47. On information and belief, Arunachalam knew (prior to issuance of the '556 Patent) of the 1997 publication of her International Application and knew or should have known it was highly material to the patentability of the claims of the '556 Continuation-In-Part Application which incorporated New Matter and the claims of the '506 Application which incorporated New Matter.

48. On information and belief, Arunachalam, with deceptive intent, withheld the International Application from the PTO Examiners in connection with examination of the '556 Continuation-In-Part Application and the '506 Application.

49. The '178, '556 and '506 Patents are unenforceable due to inequitable conduct before the PTO by Arunachalam during prosecution of the '178, '556 and '506 Applications.

50. Microsoft seeks and is entitled to a declaratory judgment that the '178, '556 and '506 Patents are unenforceable.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment of Patent Invalidity – 35 U.S.C. §§ 101 et seq.)

51. Microsoft realleges and incorporates paragraphs 1 to 20 as if fully set forth herein.

52. The Patents in Suit, and each of the claims therein, are invalid for failure to comply the requirements of Title 35 of the United States Code, including without limitation one or more of §§ 101, 102, 103, and 112.

53. Microsoft seeks and is entitled to a declaratory judgment that all claims in the Patents in Suit are invalid.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment of Non-Infringement)

54. Microsoft realleges and incorporates paragraphs 1 to 20 as if fully set forth herein.

55. Microsoft publishes and licenses to customers in this District, and elsewhere, Visual Studio software.

56. WebXchange has asserted that use of Web services created using Microsoft's Visual Studio software, including use of Web services that make use of the SOAP protocol for real-time transactions, infringes the Patents in Suit.

57. Microsoft's publication and licensing of its Visual Studio software does not infringe any valid claim of the Patents in Suit.

58. Microsoft's customers' use of Web services created using Microsoft's Visual Studio software, including use of Web services that make use of the SOAP protocol for real-time transactions, does not infringe any valid claim of the Patents in Suit.

59. Microsoft seeks and is entitled to a declaratory judgment that its publication and licensing of its Visual Studio software does not infringe any valid claim of the Patents in Suit and that Microsoft's customers' use of Web services created using Microsoft's Visual Studio software, including use of Web services that make use of the SOAP protocol for real-time transactions, does not infringe any valid claim of the Patents in Suit.

PRAYER FOR RELEF

WHEREFORE, Microsoft requests entry of judgment in its favor and against WebXchange as follows:

A. For a declaration of this Court that the Patents in Suit, and each of the claims therein, are invalid;

B. For a declaration of this Court that the Patents in Suit are unenforceable;

C. For a declaration of this Court that Microsoft's publication and licensing of its Visual Studio software does not infringe any valid claim of the Patents in Suit;

D. For a declaration of this Court that Microsoft's customers' use of Web services created using Microsoft's Visual Studio software, including use of Web services that make use of the SOAP protocol for real-time transactions, does not infringe any valid claim of the Patents in Suit;

E. For costs and reasonable attorneys' fees incurred in connection with this action; and

F. For such other and further relief as the court deems just.

Dated this 11th day of November, 2008.

By: _____

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