

DEC 11 2003

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

DEC 10 2002

MICHAEL W. DOBBINS
CLERK, U. S. DISTRICT COURT

Pinpoint Incorporated,)
)
 Plaintiff,)
)
 v.)
)
 Amazon.com, Inc.; Babiesrus.com, LLC;)
 BeMusic, Inc.; Borders Group, Inc.; Borders, Inc.;)
 CDNow, Inc.; Target Corporation;)
 Toys "R" Us, Inc.; Toysrus.com, Inc.;)
 Virgin Entertainment Group, Inc.;)
 and Walden Book Company, Inc.,)
)
 Defendants.)

Civil Action No. 03C 4954
 Judge Suzanne B. Conlon
 Magistrate Judge Nan R. Nolan
 DEMAND FOR JURY TRIAL

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Pinpoint Incorporated, by and through its attorneys, files this Second Amended Complaint for Patent Infringement against Defendants Amazon.com, Inc.; BeMusic, Inc., formerly named CDNow, Inc.; Babiesrus.com, LLC; Borders Group, Inc. and Borders, Inc. (collectively "Borders"); CDNow, Inc., Target Corporation, d/b/a Target Corp., Marshall Fields and Mervyns; Toys "R" Us, Inc., d/b/a Imaginarium.com; Toysrus.com, Inc.; Virgin Entertainment Group, Inc. d/b/a Virginmega.com; and Walden Book Company, Inc. Plaintiff alleges as follows:

67

NATURE OF THE ACTION

1. This is a civil action for the infringement of United States Patent Nos. 5,754,939 (“the ‘939 patent”), 5,758,257 (“the ‘257 patent”), 5,835,087 (“the ‘087 patent”), and 6,088,722 (“the ‘722 patent”) (collectively, the “patents-in-suit”).

2. Plaintiff Pinpoint Incorporated (“Pinpoint”) is a Texas corporation with its principal place of business at 512 Main Street, Suite 601, Fort Worth, Texas 76102. Pinpoint owns several United States patents, including all of the patents-in-suit. In accordance with Local Rule 3.2, Pinpoint Incorporated, through its counsel, states that it has no parent corporations and no publicly held company owns 10% or more of its stock.

3. Defendant Amazon.com, Inc. (“Amazon”) is a Delaware corporation with its principal place of business at 1200 Twelfth Avenue South, Seattle, Washington 98144.

4. Defendant Babiesrus.com, LLC is a subsidiary of Toys “R” Us, Inc. with its principal place of business at 461 From Road, Paramus, New Jersey 07652.

5. On information and belief, BeMusic, Inc. is a Pennsylvania corporation with its principle place of business at 1540 Broadway 24th Floor, New York, New York 10036. On information and belief, BeMusic, Inc. was formerly named CDNow, Inc.

6. Defendant Borders Group, Inc. is a Michigan corporation with its principal place of business at 100 Phoenix Drive, Ann Arbor, Michigan 48108.

7. Defendant Borders, Inc. is a wholly-owned subsidiary of Borders Group, Inc. with its principal place of business at 100 Phoenix Drive, Ann Arbor, Michigan 48108.

8. On information and belief, Defendant CDNow, Inc. is a subsidiary of Bertelsmann AG with its principal place of business at 1005 Virginia Drive, Fort Washington, Pennsylvania 19034.

9. Defendant Target Corporation is a Minnesota corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, Minnesota 55403. Target Corporation does business as Target Corporation, Marshall Fields and Mervyns.

10. Defendant Toys “R” Us, Inc. is a Delaware corporation with its principal place of business at 461 From Road, Paramus, New Jersey 07652. On information and belief, Toys “R” Us, Inc. does business as Imaginarium.com.

11. Defendant Toysrus.com, Inc. is a subsidiary of Toys “R” Us, Inc. with its principal place of business at 461 From Road, Paramus, New Jersey 07652.

12. On information and belief, Defendant Virgin Entertainment Group, Inc. is a Delaware corporation with its principal place of business at 5757 Wilshire Boulevard Suite 300, Los Angeles, California 90010. Virgin Entertainment Group, Inc. does business as Virginmega.com.

13. Defendant Walden Book Company, Inc. is a wholly-owned subsidiary of Borders Group, Inc. with its principal place of business at 100 Phoenix Drive, Ann Arbor, Michigan 48108.

JURISDICTION AND VENUE

14. This action arises under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*, and therefore this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

15. Venue is proper in this district under 28 U.S.C. §§ 1391(b), (c) and 1400(b) in that a substantial part of the events giving rise to the claims and causes of action occurred in this judicial district and division, and/or Defendants reside in this judicial district and division for purposes of venue.

THE PATENTS-IN-SUIT

16. On May 19, 1998, the United States Patent and Trademark Office issued the '939 patent to Frederick Herz, Jason M. Eisner, Lyle H. Ungar and Mitchell P. Marcus entitled "System For Generation Of User Profiles For A System For Customized Electronic Identification Of Desirable Objects." The '939 patent was subsequently assigned to Pinpoint. A copy of the '939 patent is attached to this First Amended Complaint as Exhibit 1.

17. On May 26, 1998, the United States Patent and Trademark Office issued the '257 patent to Frederick Herz, Lyle Ungar, Jian Zhang, David Wachob and Marcos Salgonicoff entitled "System And Method For Scheduling Broadcast Of And Access To Video Programs And Other Data Using Customer Profile." The '257 patent was subsequently assigned to Pinpoint. A copy of the '257 patent is attached to this First Amended Complaint as Exhibit 2.

18. On November 10, 1998, the United States Patent and Trademark Office issued the '087 patent to Frederick Herz, Jason M. Eisner and Lyle H. Ungar entitled "System For Generation Of Object Profiles For A System For Customized Electronic Identification Of Desirable Objects." The '087 patent was subsequently assigned to Pinpoint. A copy of the '087 patent is attached to this First Amended Complaint as Exhibit 3.

19. On July 11, 2000, the United States Patent and Trademark Office issued the '722 patent to Frederick Herz, Lyle Ungar, Jian Zhang, David Wachob and Marcos Salgonicoff entitled "System And Method For Scheduling Broadcast Of And Access To Video Programs And Other Data Using Customer Profiles." The '722 patent was subsequently assigned to Pinpoint. A copy of the '722 patent is attached to this First Amended Complaint as Exhibit 4.

20. The patents-in-suit are presumptively valid and enforceable under 35 U.S.C. § 282.

21. The agreement assigning the rights of the '939, '257, '087 and '722 patents to Pinpoint gives it the right to sue and to recover for past, present and future infringement of the patents-in-suit.

FACTUAL BACKGROUND

22. The advent of the information age has resulted in an explosion of data from a variety of sources, including billions of pages of internet content. The quantity of data that can be accessed electronically is enormous, and can be overwhelming. Pinpoint's patented technologies in the fields of customer relationship management and personalization allow for the customized electronic identification of desirable objects and access to data using customer profiles and object profiles.

23. The patents-in-suit owned by Pinpoint were developed by Pinpoint inventors, including Fred Herz and a group of prominent academic researchers and leading University of Pennsylvania computer science professors.

24. Among other things, the inventions at issue relate to systems and methods for using the personal history of content accessed by a computer user, to identify a customized selection of content items, which is likely to be of interest to that user. Pinpoint's patented technology can be used in various applications, including, but not limited to, personalized electronic news, advertising, product recommendations, television programming and other "e-commerce" situations. The inventions created by Pinpoint inventors and described in Pinpoint's patents are sometimes referred to as "personalization" technology.

25. Amazon makes, uses, offers to sell, and/or sells personalization technology, including, but not limited to, the technology that operates features of the Amazon internet site (www.amazon.com), including:

- a. “[Username’s] Store”
- b. “Your Bargains”
- c. “Recommended Authors, Artists & Directors”
- d. “Your Recommendations”
- e. “Your Favorites”
- f. “New for You”
- g. “Gold Box”
- h. “Your Message Center”
- i. “Customers who bought this also bought”
- j. “Listmania”
- k. “New For You, New Releases”
- l. “Why was I recommended this?”
- m. “Here are some recommendations we think you might like based on your rating”
- n. “Customers who bought items in your recent history also bought”
- o. “Customers who bought items in your shopping cart also bought”
- p. “Customers who shopped for ____ also shopped for . . .”
- q. “Just Like You”
- r. “Wish List Recommendations”
- s. “Hello [username]. We have recommendations for you”
- t. “Recommendations Wizard”
- u. “Improve Your Recommendations”
- v. “Hello [username]. We have Video Recommendations for you”
- w. “Purchase Circles”

x. "Recommendations for your next visit"

26. Amazon claims that it determines "your favorite categories and stores by examining your purchases, items you've told us you own, and items you've rated. We then compare this activity with that of other customers. We use this information to update Your Store, Your Recommendations, and New for You, and to personalize pages across the whole store to match your interests more closely." (www.amazon.com)

27. Amazon has described the technology it employs as follows: "Return customers are greeted by name, and personalized book and music video suggestions are provided for customers based on their individual past purchases. Specific selections are accompanied by a list of additional books, videos, or other products that the visitor may find of interest." (<http://lpf.ai.mit.edu/Patents/amazon-vs-bn.html>)

28. Amazon's personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

29. Babiesrus.com makes, uses, offers to sell, and/or sells personalization technology. Babiesrus.com uses Amazon's website and personalization technologies, including the personalization features described in paragraphs 24-27.

30. Babiesrus.com's use of personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

31. BeMusic, Inc., formerly named CDNow, Inc., makes, uses, offers to sell, and /or sells personalization technology. BeMusic, Inc. uses Amazon's website and personalization technologies, including the personalizations features described in paragraphs 24-27.

32. BeMusic, Inc.'s use of personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

33. Borders makes, uses, offers to sell, and/or sells personalization technology. Borders uses Amazon's website and personalization technologies, including the personalization features described in paragraphs 24-27.

34. Borders' use of personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

35. CDNow, Inc. makes or made, uses or used, offers to sell or offered to sell, and/or sells or sold personalization technology. CDNow, Inc. uses Amazon's website and personalization technologies, including the personalization features described in paragraphs 24-27. CDNow, Inc. also made, used, offered to sell and/or sold personalization technology before it partnered with Amazon.

36. CDNow, Inc.'s use of personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

37. Target Corporation, doing business as Target Corporation, Marshall Fields and Mervyns makes, uses, offers to sell, and/or sells personalization technology. Target uses Amazon's website and personalization technologies, including the personalization features described in paragraphs 24-27.

38. Target's use of personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

39. Toys "R" Us, Inc., doing business as Imaginarium makes, uses, offers to sell, and/or sells personalization technology. Toys "R" Us uses Amazon's website and personalization technologies, including the personalization features described in paragraphs 24-27.

40. Toys "R" Us' use of personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

41. Toysrus.com makes, uses, offers to sell, and/or sells personalization technology. Toysrus.com uses Amazon's website and personalization technologies, including the personalization features described in paragraphs 24-27.

42. Toysrus.com's use of personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

43. Virgin Entertainment Group, Inc., doing business as Virginmega.com makes, uses, offers to sell, and/or sells personalization technology. Virginmega.com uses Amazon's website and personalization technologies, including the personalization features described in paragraphs 24-27.

44. Virgin Entertainment Group, Inc.'s use of personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

45. Walden Book Company, Inc. makes, uses, offers to sell, and/or sells personalization technology. Walden Books uses Amazon's website and personalization technologies, including the personalization features described in paragraphs 24-27.

46. Walden Book Company's use of personalization technology meets each and every limitation of at least one claim of each of the patents-in-suit, either literally or with only insubstantial differences.

COUNT ONE
Infringement by Amazon

47. Plaintiff restates and realleges each of the allegations in paragraphs 1 through 46 of the Second Amended Complaint and incorporates them herein.

48. Amazon has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and throughout the United States by making, using, offering for sale, selling, and/or importing infringing personalization technology, or causing or inducing others to do so.

49. Upon information and belief, Amazon's infringement has been willful and deliberate.

50. Amazon will continue to infringe the patents-in-suit unless such infringement is enjoined by this Court.

51. Amazon's infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

COUNT TWO
Infringement by BeMusic, Inc.

52. Plaintiff restates and realleges each of the allegations in Paragraph 1 through 46 of the Second Amended Complaint and incorporates them herein.

53. BeMusic, formerly named CDnow, Inc., has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and throughout the United States by making, using, offering for sale, selling, importing and/or causing to be sold personalization technology.

54. Upon information and belief, BeMusic's infringement has been willful and deliberate.

55. BeMusic will continue to infringe the patents-in-suit unless enjoined by this court.

56. BeMusic's infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

COUNT THREE
Infringement by Borders

57. Plaintiff restates and realleges each of the allegations in Paragraph 1 through 46 of the Second Amended Complaint and incorporates them herein.

58. Borders has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and throughout the United States by making, using, offering for sale, selling, importing and/or causing to be sold personalization technology.

59. Upon information and belief, Borders' infringement has been willful and deliberate.

60. Borders will continue to infringe the patents-in-suit unless enjoined by this court.

61. Borders' infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

COUNT FOUR
Infringement by Babiesrus.com, LLC

62. Plaintiff restates and realleges each of the allegations in Paragraph 1 through 46 of the Second Amended Complaint and incorporates them herein.

63. Babiesrus.com has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and throughout the United States by making, using, offering for sale, selling, importing and/or causing to be sold personalization technology.

64. Upon information and belief, Babiesrus.com's infringement has been willful and deliberate.

65. Babiesrus.com will continue to infringe the patents-in-suit unless enjoined by this court.

66. Babiesrus.com's infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

COUNT FIVE
Infringement by CDNow, Inc.

67. Plaintiff restates and realleges each of the allegations in paragraphs 1 through 46 of the Second Amended Complaint and incorporates them herein.

68. CDNow, Inc. has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and throughout the United States by making, using, offering for sale, selling, importing and/or causing to be sold personalization technology.

69. Upon information and belief, CDNow, Inc.'s infringement has been willful and deliberate.

70. CDNow, Inc. will continue to infringe the patents-in-suit unless enjoined by this court.

71. CDNow Inc.'s infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

COUNT SIX
Infringement by Target Corporation

72. Plaintiff restates and realleges each of the allegations in Paragraph 1 through 46 of the Second Amended Complaint and incorporates them herein.

73. Target Corporation, doing business as Target Corporation, Marshall Fields and Mervyns has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and throughout the United States by making, using, offering for sale, selling, importing and/or causing to be sold personalization technology.

74. Upon information and belief, Target Corporation's infringement has been willful and deliberate.

75. Target Corporation will continue to infringe the patents-in-suit unless enjoined by this court.

76. Target Corporation's infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

COUNT SEVEN
Infringement by Toys "R" Us, Inc.

77. Plaintiff restates and realleges each of the allegations in Paragraph 1 through 46 of the Second Amended Complaint and incorporates them herein.

78. Toys "R" Us, doing business as Imaginarium, has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and

throughout the United States by making, using, offering for sale, selling, importing and/or causing to be sold personalization technology.

79. Upon information and belief, Toys “R” Us’s infringement has been willful and deliberate.

80. Toys “R” Us will continue to infringe the patents-in-suit unless enjoined by this court.

81. Toys “R” Us’s infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

COUNT EIGHT
Infringement by Toysrus.com, Inc.

82. Plaintiff restates and realleges each of the allegations in Paragraph 1 through 46 of the Second Amended Complaint and incorporates them herein.

83. Toysrus.com has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and throughout the United States by making, using, offering for sale, selling, importing and/or causing to be sold personalization technology.

84. Upon information and belief, Toysrus.com’s infringement has been willful and deliberate.

85. Toysrus.com will continue to infringe the patents-in-suit unless enjoined by this court.

86. Toysrus.com’s infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

COUNT NINE
Infringement by Virgin Entertainment Group, Inc.

87. Plaintiff restates and realleges each of the allegations in Paragraph 1 through 46 of the Second Amended Complaint and incorporates them herein.

88. Virgin Entertainment Group, Inc., doing business as Virginmega.com has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and throughout the United States by making, using, offering for sale, selling, importing and/or causing to be sold personalization technology.

89. Upon information and belief, Virgin Entertainment Group, Inc.'s infringement has been willful and deliberate.

90. Virgin Entertainment Group, Inc. will continue to infringe the patents-in-suit unless enjoined by this court.

91. Virgin Entertainment Group Inc.'s infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

COUNT TEN
Infringement by Walden Book Company, Inc.

92. Plaintiff restates and realleges each of the allegations in Paragraph 1 through 46 of the Second Amended Complaint and incorporates them herein.

93. Walden Book Company has infringed, actively induced and/or contributed to the infringement of each of the patents-in-suit in this judicial district and throughout the United States by making, using, offering for sale, selling, importing and/or causing to be sold personalization technology.

94. Upon information and belief, Walden Book Company's infringement has been willful and deliberate.

95. Walden Book Company will continue to infringe the patents-in-suit unless enjoined by this court.

96. Walden Book Company's infringement of the patents-in-suit has injured Plaintiff and caused it significant financial damage.

PRAYER FOR RELIEF

97. WHEREFORE, Pinpoint respectfully requests this Court to grant the following relief, and any other relief the Court may deem proper, against the defendants:

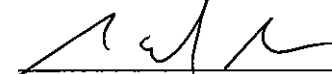
- a. Enter judgment in favor of plaintiff Pinpoint determining that the Defendants directly infringe, and have directly infringed, the patents-in-suit in violation of 35 U.S.C. § 271(a);
- b. Enter judgment in favor of plaintiff Pinpoint determining that the Defendants contributorily infringe, and have contributorily infringed, the patents-in-suit in violation of 35 U.S.C. § 271(b);
- c. Enter judgment in favor of plaintiff Pinpoint determining that the Defendants induce the infringement of, and have induced the infringement of, the patents-in-suit in violation of 35 U.S.C. § 271(c);
- d. Preliminarily and permanently enjoin Defendants and their officers, agents, divisions, affiliates, subsidiaries, employees and representatives, and all those controlled by or acting in concert or privity with them, from infringing, inducing the infringement and/or contributing to the infringement of the patents-in-suit;
- e. Award Pinpoint monetary damages for infringement in an amount no less than a reasonable royalty;

f. Award Pinpoint treble damages for willful infringement pursuant to 35 U.S.C. § 284; and

g. Award Pinpoint prejudgment interest, attorneys' fees and such other and further relief as the Court may deem just and proper.

Dated: December 5, 2003

Respectfully Submitted,



One of Plaintiff's Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2003, I caused a copy of the foregoing
SECOND AMENDED COMPLAINT to Defendants' counsel at the following addresses:

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J. David Hadden, Esq.
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Wendy Bjerknes, Esq.
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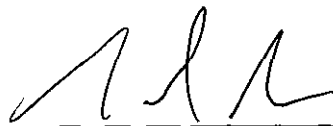
Adam K. Mortara

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of December, 2003, I caused a copy of the foregoing AGREED MOTION FOR LEAVE TO AMEND COMPLAINT A SECOND TIME to Defendants' counsel at the following addresses:

Lynn H. Pasahow, Esq.
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