

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

FILED-CLERK
U.S. DISTRICT COURT
2007 JUN 13 PM 2: 34

ACHATES REFERENCE PUBLISHING, INC.,

Plaintiff,

vs.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. TX EASTERN-MARSHALL
2-07-CV-245 TSW/

BY _____

JURY TRIAL DEMANDED

PLAINTIFF'S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Achates Reference Publishing, Inc. ("Achates"), by and through its attorneys, as and for its complaint against defendant Microsoft Corporation ("Microsoft") alleges:

PARTIES

1. Plaintiff Achates is a New Jersey corporation, having an address at 244 English Place, Basking Ridge, New Jersey 07920.

2. Defendant Microsoft is a Washington corporation, having an address at One Microsoft Way, Redmond, Washington 98052. On information and belief, Microsoft is qualified to do business in the State of Texas, Filing No. 10404606, and has appointed Corporation Service Company d/b/a CSC, 701 Brazos Street, Suite 1050, Austin, Texas 78701, as its agent for service of process.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over Microsoft because Microsoft, either directly or through intermediates such as distributors, retailers, and others, regularly and systematically conducts and transacts business within the State of Texas. Microsoft's business

conduct and transactions include, but are not limited to, shipping, distributing, selling, and offering for sale material or products to companies, individuals, and other entities located in the State of Texas.

5. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b), (c).

PATENT INFRINGEMENT

6. On November 9, 1999, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,982,889 ("the '889 patent") entitled "Method and Apparatus for Distributing Information Products," with Jason Paul DeMont as sole inventor. A true and correct copy of the '889 patent is attached as Exhibit A.

7. On January 9, 2001, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,173,403 ("the '403 patent") entitled "Method and Apparatus for Distributing Information Products," with Jason Paul DeMont as sole inventor. The '403 patent is a continuation-in-part of the '889 patent. A true and correct copy of the '403 patent is attached as Exhibit B.

8. Achates is the owner by assignment of all right, title, and interest in and to the '889 patent and the '403 patent, with full and exclusive right to bring suit to enforce these patents.

9. In violation of 35 U.S.C. § 271, Microsoft has directly infringed the '889 patent and the '403 patent by making, using, selling, and offering for sale the subject matter claimed in one or more claims of the '889 patent and one or more claims of the '403 patent, without authority of Achates.

10. In violation of 35 U.S.C. § 271, Microsoft has induced and contributed to infringement of the '889 patent and the '403 patent.

11. Microsoft's infringement of the '889 patent and the '403 patent has been willful.

12. Achates has been harmed by Microsoft's infringement. Such harm will continue unless Microsoft is enjoined by this Court from further infringement.

DEMAND FOR RELIEF

WHEREFORE, plaintiff Achates requests entry of a judgment against defendant Microsoft, granting relief as follows:


- A. Determining Microsoft to be liable to Achates for patent infringement of the '889 patent and the '403 patent;
- B. Awarding Achates damages adequate to compensate for the infringement;
- C. Determining Microsoft was willful in the infringement of the '889 patent and the '403 patent;
- D. Increasing the damages up to three times, under authority of 35 U.S.C. §284, second paragraph;
- E. Permanently enjoining Microsoft, its officers, agents, servants, employees, and attorneys, and those persons acting in concert or participation with Microsoft, from further infringement of the '889 patent and the '403 patent;
- F. Determining that this is an exceptional case and awarding Achates its reasonable attorney fees.
- G. Granting such other and further relief as the Court may find just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38, plaintiff Achates hereby demands a trial by jury for all issues in this case.

Dated: June 13, 2007

Respectfully submitted,

By: 
S. Calvin Capshaw
State Bar No. 03783900
Email: ccapshaw@mailbmc.com
Elizabeth L. DeRieux
State Bar No. 05770585
Email: ederieux@maibmc.com
Andrew W. Spangler
State Bar No. 24041960
Email: aspangler@mailbmc.com
BROWN MCCARROLL, L.L.P.
1127 Judson Road Suite 220
Longview, Texas 75601
Longview, TX 75601
P.O. Box 3999
Longview, Texas 75606
Phone: (903) 236-9800
Facsimile: (903) 236-8787

Robert M. Parker
State Bar No. 15498000
Email: rmparker@pbatyler.com
Robert Christopher Bunt
State Bar No. 00787164
Email: rcbunt@pbatyler.com
Charles Ainsworth
State Bar No. 00783521
Email: charley@pbatyler.com
PARKER, BUNT & AINSWORTH
100 E. Ferguson, Suite 1114
Tyler, TX 75702
Phone: (903) 531-3535
Facsimile: (903) 533-9687

*Attorneys for Plaintiff
Achates Reference Publishing, Inc.*

Of Counsel:

Vincent E. McGeary
New Jersey State Bar No. 041681991
GIBBONS P.C.
One Gateway Center
Newark, New Jersey 07102-5310
Phone: (973) 596-4837
Facsimile: (973) 639-6477
Email: vmcgeary@gibbonslaw.com

Michael Cukor
New York State Bar No. 3935889
GIBBONS P.C.
One Pennsylvania Plaza, 37th Floor
New York, New York 10119-3701
(212) 613-2013 (telephone)
(212) 554-9658 (facsimile)
Email: mcukor@gibbonslaw.com