

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**FILED IN CLERK'S OFFICE
U.S.D.C. ATLANTA**

MAR 30 2006

LUTHER D. THOMAS, Clerk
By: *L. Pindy*
Deputy Clerk

CATCH CURVE, INC.,

Plaintiff,

v.

ESKER S.A. and ESKER, INC.,

Defendants.

Civil Action
File No. _____

06 CV 0753

JURY TRIAL DEMANDED

-CC

COMPLAINT

Plaintiff Catch Curve, Inc. ("Catch Curve") states its Complaint against Esker S.A. and Esker, Inc. (collectively "Defendants") as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.
2. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a).
3. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§1391(b) and (c).

PARTIES

4. Plaintiff Catch Curve is a Delaware corporation with its principal place of business in Atlanta, Georgia.

5. Catch Curve is the owner, by assignment, of all right, title, and interest in and to the following United States Patents, including the right to bring suit for patent infringement: United States Patent No. 4,994,926 (“the ‘926 patent”); United States Patent No. 5,291,302 (“the ‘302 patent”); United States Patent No. 5,459,584 (“the ‘584 patent”); United States Patent No. 6,643,034 (“the ‘034 patent”); and United States Patent No. 6,785,021 (“the ‘021 patent”). True and correct copies of the ‘926 patent, the ‘302 patent, the ‘584 patent, the ‘034 patent, and the ‘021 patent are appended hereto as Exhibits A, B, C, D, and E, respectively.

6. Upon information and belief, Defendant Esker S.A. is a French corporation with a principal place of business at 10 rue des Emeraudes, 69006 Lyon, France. Defendant Esker S.A. does business in the United States through its wholly-owned subsidiary, Defendant Esker, Inc.

7. Upon information and belief, Defendant Esker, Inc. is a Wisconsin corporation with a principal place of business at 1212 Deming Way, Suite 350, Madison, Wisconsin 53717. Upon information and belief, Defendant Esker, Inc. is

a wholly-owned subsidiary of Defendant Esker S.A. and the sole and exclusive distributor throughout the United States of software products developed by Defendant Esker S.A.

8. Upon information and belief, Defendants regularly and continuously conduct business within the State of Georgia and within this judicial district and division. Defendant Esker, Inc. is registered with the Georgia Secretary of State and maintains an agent for service of process in Atlanta, Georgia.

9. Upon information and belief, this Court has personal jurisdiction over Defendants for at least the reasons that Defendants sell significant quantities of products and/or services that infringe the '926 patent, the '302 patent, the '584 patent, the '034 patent, and the '021 patent to customers in Georgia and in this district and division; maintain a website at www.esker.com that is accessible in Georgia and in this district and division; and derive significant revenues from sales in this district and division.

THE CONTROVERSY

10. Catch Curve is the owner of the '926 patent, the '302 patent, the '584 patent, the '034 patent, and the '021 patent.

11. Defendants have in the past and continue to make, have made, offer for sale, sell, use, and/or import into the United States one or more products,

services, and/or processes that constitute direct infringement, contributory infringement, and/or inducement to infringe one or more claims of Catch Curve's '926 patent in violation of 35 U.S.C. § 271, including, but not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

12. Defendants have in the past and continue to make, have made, offer for sale, sell, use, and/or import into the United States one or more products, services, and/or processes that constitute direct infringement, contributory infringement, and/or inducement to infringe one or more claims of Catch Curve's '302 patent in violation of 35 U.S.C. § 271, including, but not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

13. Defendants have in the past and continue to make, have made, offer for sale, sell, use, and/or import into the United States one or more products, services, and/or processes that constitute direct infringement, contributory infringement, and/or inducement to infringe one or more claims of Catch Curve's '584 patent in violation of 35 U.S.C. § 271, including, but not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

14. Defendants have in the past and continue to make, have made, offer for sale, sell, use, and/or import into the United States one or more products, services, and/or processes that constitute direct infringement, contributory infringement, and/or inducement to infringe one or more claims of Catch Curve's '034 patent in violation of 35 U.S.C. § 271, including, but not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

15. Defendants have in the past and continue to make, have made, offer for sale, sell, use, and/or import into the United States one or more products, services, and/or processes that constitute direct infringement, contributory infringement, and/or inducement to infringe one or more claims of Catch Curve's '021 patent in violation of 35 U.S.C. § 271, including, but not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

COUNT ONE:
INFRINGEMENT OF U.S. PATENT NO. 4,994,926

16. Catch Curve realleges and incorporates herein the allegations of paragraphs 1 through 15 of this Complaint as if fully set forth herein.

17. Defendants have engaged in the manufacture, use, sale, offer for sale, and/or importation of products, services, and/or processes that infringe, directly

and/or indirectly, one or more of the claims of Catch Curve's '926 patent, in violation of 35 U.S.C. § 271. The infringing products, services, and/or processes manufactured, used, sold, offered for sale, and/or imported by Defendants include, but are not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

18. Catch Curve informed Defendants of the '926 patent and the activity that is believed to be an infringement of the '926 patent, accompanied by a proposal to abate the infringement by license, at least as early as November 28, 2005.

19. The Defendants' infringement of Catch Curve's '926 patent has been, and continues to be, willful.

20. Catch Curve has and continues to suffer damages as a direct and proximate result of Defendants' infringement of Catch Curve's '926 patent, and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing their infringement. Catch Curve has no adequate remedy at law.

21. Catch Curve is entitled to: (1) damages adequate to compensate it for Defendants' infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorney fees and costs; and (4) a preliminary and permanent injunction.

COUNT TWO:
INFRINGEMENT OF U.S. PATENT NO. 5,291,302

22. Catch Curve realleges and incorporates herein the allegations of paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. Defendants have engaged in the manufacture, use, sale, offer for sale, and/or importation of products, services, and/or processes that infringe, directly and/or indirectly, one or more of the claims of Catch Curve's '302 patent, in violation of 35 U.S.C. § 271. The infringing products, services, and/or processes manufactured, used, sold, offered for sale, and/or imported by Defendants include, but are not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

24. Catch Curve informed Defendants of the '302 patent and the activity that is believed to be an infringement of the '302 patent, accompanied by a proposal to abate the infringement by license, at least as early as November 28, 2005.

25. The Defendants' infringement of Catch Curve's '302 patent has been, and continues to be, willful.

26. Catch Curve has and continues to suffer damages as a direct and proximate result of Defendants' infringement of Catch Curve's '302 patent, and will suffer additional and irreparable damages unless Defendants are permanently

enjoined by this Court from continuing their infringement. Catch Curve has no adequate remedy at law.

27. Catch Curve is entitled to: (1) damages adequate to compensate it for Defendants' infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorney fees and costs; and (4) a preliminary and permanent injunction.

COUNT THREE:
INFRINGEMENT OF U.S. PATENT NO. 5,459,584

28. Catch Curve realleges and incorporates herein the allegations of paragraphs 1 through 27 of this Complaint as if fully set forth herein.

29. Defendants have engaged in the manufacture, use, sale, offer for sale, and/or importation of products, services, and/or processes that infringe, directly and/or indirectly, one or more of the claims of Catch Curve's '584 patent, in violation of 35 U.S.C. § 271. The infringing products, services, and/or processes manufactured, used, sold, offered for sale, and/or imported by Defendants include, but are not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

30. Catch Curve informed Defendants of the '584 patent and the activity that is believed to be an infringement of the '584 patent, accompanied by a proposal to abate the infringement by license, at least as early as November 28, 2005.

31. The Defendants' infringement of Catch Curve's '584 patent has been, and continues to be, willful.

32. Catch Curve has and continues to suffer damages as a direct and proximate result of Defendants' infringement of Catch Curve's '584 patent, and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing their infringement. Catch Curve has no adequate remedy at law.

33. Catch Curve is entitled to: (1) damages adequate to compensate it for Defendants' infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorney fees and costs; and (4) a preliminary and permanent injunction.

COUNT FOUR:
INFRINGEMENT OF U.S. PATENT NO. 6,643,034

34. Catch Curve realleges and incorporates herein the allegations of paragraphs 1 through 33 of this Complaint as if fully set forth herein.

35. Defendants have engaged in the manufacture, use, sale, offer for sale, and/or importation of products, services, and/or processes that infringe, directly and/or indirectly, one or more of the claims of Catch Curve's '034 patent, in violation of 35 U.S.C. § 271. The infringing products, services, and/or processes manufactured, used, sold, offered for sale, and/or imported by Defendants include,

but are not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

36. Catch Curve informed Defendants of the '034 patent and the activity that is believed to be an infringement of the '034 patent, accompanied by a proposal to abate the infringement by license, at least as early as November 28, 2005.

37. The Defendants' infringement of Catch Curve's '034 patent has been, and continues to be, willful.

38. Catch Curve has and continues to suffer damages as a direct and proximate result of Defendants' infringement of Catch Curve's '034 patent, and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing their infringement. Catch Curve has no adequate remedy at law.

39. Catch Curve is entitled to: (1) damages adequate to compensate it for Defendants' infringement, which amounts to, at a minimum, a reasonable royalty; (2) treble damages; (3) its attorney fees and costs; and (4) a preliminary and permanent injunction.

COUNT FIVE:
INFRINGEMENT OF U.S. PATENT NO. 6,785,021

40. Catch Curve realleges and incorporates herein the allegations of paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. Defendants have engaged in the manufacture, use, sale, offer for sale, and/or importation of products, services, and/or processes that infringe, directly and/or indirectly, one or more of the claims of Catch Curve's '021 patent, in violation of 35 U.S.C. § 271. The infringing products, services, and/or processes manufactured, used, sold, offered for sale, and/or imported by Defendants include, but are not necessarily limited to, Defendants' Esker Fax Server product and Esker On Demand for Office service.

42. Catch Curve informed Defendants of the '021 patent and the activity that is believed to be an infringement of the '021 patent, accompanied by a proposal to abate the infringement by license, at least as early as November 28, 2005.

43. The Defendants' infringement of Catch Curve's '021 patent has been, and continues to be, willful.

44. Catch Curve has and continues to suffer damages as a direct and proximate result of Defendants' infringement of Catch Curve's '021 patent, and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing their infringement. Catch Curve has no adequate remedy at law.

45. Catch Curve is entitled to: (1) damages adequate to compensate it for Defendants' infringement, which amounts to, at a minimum, a reasonable royalty;

(2) treble damages; (3) its attorney fees and costs; and (4) a preliminary and permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Catch Curve, Inc. prays that the Court enter judgment in favor of Plaintiff and against Defendants Esker S.A. and Esker, Inc., jointly and severally, as follows:

A. That Defendants be ordered to pay damages adequate to compensate Catch Curve for Defendants' infringement of Catch Curve's United States Patent No. 4,994,926; United States Patent No. 5,291,302; United States Patent No. 5,459,584; United States Patent No. 6,643,034; and United States Patent No. 6,785,021, pursuant to 35 U.S.C. § 284;

B. That Defendants be ordered to pay treble damages and attorney's fees pursuant to 35 U.S.C. §§ 284 and 285;

C. That Defendants be enjoined from further infringement of Catch Curve's United States Patent No. 4,994,926; United States Patent No. 5,291,302; United States Patent No. 5,459,584; United States Patent No. 6,643,034; and United States Patent No. 6,785,021, pursuant to 35 U.S.C. § 283;

D. That Defendants be ordered to pay prejudgment interest;

E. That Defendants be ordered to pay all costs associated with this action; and

F. That Catch Curve be granted such other and additional relief as the Court deems just, equitable, and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff Catch Curve, Inc. demands a trial by jury of all issues triable of right by a jury.

This 30th day of March, 2006.



Scott A. Horstemeyer
Georgia State Bar No. 367836
Dan R. Gresham
Georgia State Bar No. 310280
**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.**
100 Galleria Parkway
Suite 1750
Atlanta, Georgia 30339
Telephone: (770) 933-9500
Facsimile: (770) 951-0933

Attorneys for Plaintiff Catch Curve, Inc.