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Park City Group, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

PARK CITY GROUP, INC., a Delaware
corporation,

Plaintiff,

v.

WORKBRAIN, INC., a Delaware
corporation; and WORKBRAIN
CORPORATION, a Canadian corporation,

Defendants.

COMPLAINT AND JURY DEMAND
(Patent Infringement)

Case No. _____

The Honorable _____

Plaintiff Park City Group, Inc. ("PCG") hereby complains against defendants Workbrain, Inc. ("WBI") and Workbrain Corporation ("WBC") (collectively "Workbrain") and for its causes of action alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff PCG is a Delaware corporation with its principal place of business in Park City, Utah. PCG is engaged in the business of providing software applications and consulting services to business entities.

2. Defendant WBI is a Delaware corporation with its principal place of business in Atlanta, Georgia. Like PCG, Workbrain is engaged in the business of providing software applications to business entities.

3. Defendant WBC is a Canadian corporation with its principal place of business in Toronto, Ontario, Canada. Like PCG, Workbrain is engaged in the business of providing software applications to business entities.

4. This is an action for infringement under the patent laws of the United States, 35 U.S.C. § 271. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this Court under 28 U.S.C. § 1440(b) and 28 U.S.C. § 1391(c) because Workbrain has committed certain of the acts alleged herein within this Judicial District and is subject to personal jurisdiction in this state and, therefore, resides within this judicial district for purposes of venue.

FACTUAL ALLEGATIONS

6. In 1977, Debbi Fields opened a cookie store in Palo Alto, California. With the assistance of Debbi Fields' then husband, Randall K. Fields ("Randy Fields"), the cookie business grew rapidly. The Fieldses opened several stores between 1977 and 1990 and, in 1990, franchised their business. Today, the Mrs. Fields Franchise has over 1,000 outlets in nine countries.

7. As the Fieldses' business began to grow, Randy Fields recognized the need for technology to keep up with the Fieldses' expanding business.

8. Accordingly, Randy Fields, with the assistance of several software engineers, began to develop software applications for the Fieldses' business that would automate different aspects of their business.

The Staff Scheduler

9. One of the office solutions developed by Randy Fields for the Mrs. Fields business was automated staff resource scheduling software. The scheduling software allowed the Fieldses to prepare optimum daily staff schedules for their cookie stores by selecting and combining several types of information such as tasks to be performed, historical data from the various locations, skill requirements for given tasks, available resources, employee availability, office policies, and labor standards.

10. At the time that Randy Fields was developing his scheduling software, there were no similar software products available privately or publicly to create optimum staff scheduling for multi-unit retail locations.

11. Randy Fields' system and method for making optimum staff schedules was new, unique and useful.

The Patent

12. Randy Fields recognized the uniqueness and significant value of his scheduling system and methods. To protect his invention, on or about October 5, 1989, Randy Fields caused an application for United State Letters Patent, Serial No. 417,643 to be filed.

13. That application was allowed by the United State Patent and Trademark Office which, on May 5, 1992, granted U.S. Patent No. 5,111,391. The Patent was titled "System and Method for Making Staff Schedules as a Function of Available Resources as Well as Employee Skill Level, Availability and Priority" (hereinafter the "Patent" or the "PCG Patent"). A copy of the Patent is attached hereto as Exhibit A and is incorporated herein by reference.

14. Because Randy Fields' invention was created and developed during his employment with Mrs. Fields, Inc., the Patent was issued to Mrs. Fields, Inc. as the assignee and owner of the Patent.

15. The Patent was duly and legally issued and is valid and enforceable.

16. On or about May 11, 1990, Mrs. Fields, Inc. assigned all of its right, title and interest in the Patent to a subsidiary, Fields Software Group, Inc., which later changed its name to MFI Software Inc.

17. On or about January 1, 1994, MFI Software Inc. assigned all of its right, title, and interest in the Patent to PCG.

18. PCG is, and since January 1, 1994 has continuously been, the owner of all right, title, and interest in and to the invention covered by the Patent.

PCG and its Predecessors' Marketing of the Scheduling Software

19. Beginning in approximately 1990, MFI Software Inc. began to sell its staff scheduling software to various companies, primarily in the retail industry. This software has been marketed under the name "Scheduler" and serves as one component of several integrated software solutions for businesses. The complete line of PCG's integrated software products is currently marketed under the name "Action Manager."

20. After the Patent was issued in 1992, the Scheduler software was sold along with manuals that specifically identified the Patent in accordance with 35 U.S.C. § 287(a).

21. Since 1990, PCG and its predecessors have expended considerable time, effort, and money in the development, marketing, and sales of the Scheduler software.

22. Action Manager and its Scheduler component have become widely recognized and used in the retail and hospitality industries.

Workbrain's Infringing Activities

23. Workbrain is engaged in the manufacture, advertising, use, and sale of various software products for use in multi-site retail businesses. Workbrain markets and has marketed labor management solutions under various names such as, by way of illustration and not limitation, "Workbrain ERM 3," "Workbrain 4," "Workbrain 4.1," "Workbrain 5," "Workbrain Express," "Workbrain Enterprise Scheduler," and "Workbrain Workforce Scheduling." (hereinafter collectively "Workbrain Workforce Scheduling Software").

24. According to Workbrain's literature, Workbrain Workforce Scheduling Software "ensure[s] that the right people, with the right skills, are in the right place at the right time, at the lowest possible cost." *See* Workbrain's web page entitled "Workbrain Enterprise Scheduling," a true and correct copy of which is attached hereto as Exhibit B. Workbrain's literature states that Workbrain Workforce Scheduling Software will "[m]atch employee skills and preferences with the demand for work, and optimize your workforce deployment." *Id.* According to the literature, Workbrain Workforce Scheduling Software "[i]ncludes industry-specific functionality such as an advanced optimization engine for retailers." *Id.*; *see also* Workbrain's web page entitled "Workbrain for Retail," a true and correct copy of which is attached hereto as Exhibit C

(“Workbrain’s Retail Schedule Optimization solution leverages an advanced linear integer-programming engine coupled with activity-based scheduling and daily task list management to provide optimal and flexible labor schedules.”).

25. A Report entitled “Bernstein Research Call” (hereinafter the “Bernstein Report”), a true and correct copy of which is attached hereto as Exhibit D, and which is used for marketing Workbrain Workforce Scheduling Software on Workbrain’s website, describes the workforce scheduling process as follows:

The first element of a labor budget and a necessity for optimizing scheduling as described above, is a forecast of overall business volumes . . . The next step toward schedule optimization, after having forecast business volume is to 'translate' that into workload requirements . . . in 15- or 30-minute intervals. . . . Now, after walking through the first two steps toward that goal, namely forecasting & planning and workload requirements, the more technically challenging aspect of schedule optimization is actually satisfying those workload requirements with real employees. . . . The first phase toward true schedule optimization is intelligent generation of coverage and work patterns – that is, determining appropriate times and lengths for work periods. . . . The next phase is allocating potential staff to the work patterns by determining who can do which job and when.

See Exhibit D at 7-9.

26. Workbrain’s promotional materials and literature regarding Workbrain Workforce Scheduling Software and its scheduling methods, including but not limited to Workbrain’s website information attached to this Complaint, identify properties and characteristics of Workbrain Workforce Scheduling Software that are covered by one or more claims in PCG’s Patent.

27. Workbrain has made, used, sold, and/or offered to sell, continues to make, use, sell, and/or offer to sell, and has caused others to make, use, sell, and/or offer to sell its Workbrain Workforce Scheduling Software product, which alone or in combination with other software from Workbrain or third parties infringes the PCG Patent.

Workbrain's Promotion and Sale of Infringing Products Within Utah

28. On information and belief, some of Workbrain's customers who use, have used or plan to use Workbrain Workforce Scheduling Software in their retail outlets in Utah include, but are not limited to, Burlington Coat Factory, Target, REI, and Radio Shack.

FIRST CLAIM FOR RELIEF
(Patent Infringement – 35 U.S.C. § 271)

29. Paragraphs 1 through 28 are re-alleged and by this reference are incorporated into the Cause of Action.

30. All maintenance fees for the PCG Patent have been timely paid, and the PCG Patent has at all time subsequent to its respective issue date been fully enforceable and is now fully enforceable.

31. PCG is the assignee of record and holds all right under the PCG Patent, including the right to sue for infringement.

32. Workbrain has been, and continues to be, making, using, selling, and/or offering to sell or causing others to make, use, sell, and/or offer to sell automated labor scheduling products, including Workbrain Workforce Scheduling Software, which, alone or in combination with other Workbrain software, come within the scope of one or more claims of the PCG Patents and infringe one or more claims of the PCG Patent.

33. Workbrain has been, and continues to be, making, using, selling, and/or offering to sell or causing others to make, use, sell, and/or offer to sell automated labor scheduling products that come within a range of equivalents of the claims of the PCG Patent. Workbrain has thereby infringed one or more claims of the PCG Patent.

34. The making, using, selling, offering to sell, or causing others to make, use, sell, and/or offer to sell infringing automated labor scheduling products by Workbrain has been without authority or license from PCG and in violation of PCG's rights, thereby infringing (either literally or through the doctrine of equivalents) the PCG Patent.

35. Workbrain has caused and will continue to cause PCG substantial damage and irreparable injury by infringing the PCG Patent.

36. PCG will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Workbrain is enjoined from infringing the PCG Patent.

37. PCG is entitled to recover from Workbrain damages in an amount sufficient to compensate it for Workbrain's direct infringement of the PCG Patent, together with prejudgment interest thereon.

38. Upon information and belief, Workbrain's infringement was and is willful, intentional, and deliberate. Accordingly, this case is exceptional under 35 U.S.C. § 285, and PCG is entitled to recover treble damages and its reasonable attorneys' fees, expenses, and costs incurred in this action.

SECOND CLAIM FOR RELIEF
(Contributory Infringement – 35 U.S.C. § 271(c))

39. PCG re-alleges and incorporates herein the allegations of Paragraphs 1 through 38 above as if set forth here in full.

40. Workbrain Workforce Scheduling Software, alone or in combination with other Workbrain software, is/are material component(s) of machine, combination, or apparatus that infringes the PCG Patent, or for use in practicing the PCG Patent' patented process. On

information and belief, Workbrain Workforce Scheduling Software has knowingly been especially made or adapted for use in infringing the PCG Patent.

41. Workbrain Workforce Scheduling Software and other Workbrain software are not staple articles or commodities of commerce suitable for substantial non-infringing use.

42. On information and belief, Workbrain has been and is contributing to the infringement of the PCG Patent by marketing, distributing, and/or selling its Workbrain Workforce Scheduling Software alone or in combination with other Workbrain software in this District and elsewhere, which software is then used by its customers to infringe the PCG Patent.

43. Workbrain has caused and will continue to cause PCG substantial damage and irreparable injury by contributorily infringing the PCG Patent.

44. PCG will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Workbrain is enjoined from contributorily infringing the PCG Patent.

45. PCG is entitled to recover from Workbrain damages in an amount sufficient to compensate it for Workbrain's contributory infringement of the PCG Patent, together with prejudgment interest thereon.

46. On information and belief, Workbrain's contributory infringement was and is willful, intentional, and deliberate. Accordingly, this case is exceptional under 35 U.S.C. § 285, and PCG is entitled to recover treble damages and its reasonable attorneys' fees, expenses, and costs incurred in this action.

THIRD CAUSE OF ACTION
(Inducement of Infringement – 35 U.S.C. § 271(b))

47. PCG re-alleges and incorporates herein the allegations of Paragraphs 1 through 46 above as if set forth here in full.

48. On information and belief, Workbrain has been and is inducing infringement of the PCG Patent by marketing, distributing, and/or selling Workbrain Workforce Scheduling Software, alone or in combination with other Workbrain software, in this District and elsewhere, which software is then used to infringe the PCG Patent.

49. Workbrain has caused and will continue to cause PCG substantial damage and irreparable injury by inducing infringement of the PCG Patent.

50. PCG will suffer further irreparable injury, for which it has no adequate remedy at law, unless and until Workbrain is enjoined from inducing infringement of the PCG Patent.

51. PCG is entitled to recover from Workbrain damages in an amount sufficient to compensate it for Workbrain's inducement of others' infringement of the PCG Patent, together with prejudgment interest thereon.

52. On information and belief, Workbrain's inducement of infringement was and is willful, intentional, and deliberate. Accordingly, this case is exceptional under 35 U.S.C. § 285, and PCG is entitled to recover treble damages and its reasonable attorneys' fees, expenses, and costs incurred in this action.

PRAYER FOR RELIEF

WHEREFORE, PCG respectfully requests that this Court enter judgment and relief against Workbrain as follows:

1. On the First Cause of Action:
 - A. For a judgment that Workbrain has infringed the PCG Patent;
 - B. For an order enjoining Workbrain and its officers, agents, attorneys, servants, employees, parents, subsidiaries, affiliates, divisions, successors, and all persons in privity or active concert or participation with them from infringing the PCG Patent;

- C. For an order directing Workbrain to file with this Court and serve on counsel for PCG, within 30 days after service of any injunction in this case (or within such extended period as the Court may direct), a report in writing under oath setting forth in detail the manner and form by which they have complied with the injunction requested in Paragraph 1B above;
 - D. For an order directing that all documents, materials, and things, including but not limited to products, advertising and promotional materials, sales and marketing plans, and the like, which infringe or otherwise violate PCG's rights in the PCG Patent be delivered up to PCG and destroyed;
 - E. For an order directing Workbrain to file with this Court and serve on counsel for PCG, within 30 days after this Court's Order, a statement in writing and under oath confirming that the material described in paragraph 1D above has been destroyed;
 - F. For an award of compensatory and consequential damages in an amount subject to proof at trial, together with pre- and post-judgment interest thereon; and
 - G. For an order declaring that Workbrain's infringement was and is willful and that this case is exceptional under 35 U.S.C. § 285 and awarding PCG treble damages and its reasonable attorneys' fees, expenses, and costs incurred in this action.
2. On the Second and Third Causes of Action:
- A. For a judgment that Workbrain has contributorily infringed the PCG Patent;
 - B. For a judgment that Workbrain has induced others to infringe the PCG Patent;
 - C. For an order enjoining Workbrain and its officers, agents, attorneys, servants, employees, parents, subsidiaries, affiliates, division, successors, and all persons in privity or active concert or participation with them from contributorily infringing and/or inducing others to infringe the PCG Patent;
 - D. For an order directing Workbrain to file with this Court and serve on counsel for PCG, within 30 days after service of any injunction in this case (or within such extended period as the Court may direct), a report in writing under oath setting forth in detail the manner and form by which they have complied with such injunction requested in paragraph 2C above;

- E. For an order directing that all documents, materials, and things, including but not limited to products, advertising and promotional materials, sales and marketing plans, and the like, which contributorily infringe, induce infringement, or otherwise violate PCG's rights in its patent be delivered up to PCG and destroyed;
 - F. For an order directing Workbrain to file with this Court and serve on counsel for PCG, within 30 days after this Court's Order, a statement in writing and under oath confirming that the material described in paragraph 2E above has been destroyed;
 - G. For an award of damages in an amount sufficient to compensate PCG for Workbrain's contributory infringement of the PCG Patent, together with prejudgment interest thereon; and
 - H. For an order declaring this case exceptional under 35 U.S.C. § 285 and that Workbrain's infringement was and is willful and awarding PCG treble damages and its reasonable attorneys' fees, expenses, and costs incurred in this action.
4. On all Causes of Action: For an award of such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to the Federal Rules of Civil Procedure § 38(b), Plaintiff PCG demands a trial by jury for this action on all issues triable by jury.

Dated: April 17th, 2006

STOEL RIVES LLP



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