

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

AIRCRAFT TECHNICAL PUBLISHERS,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 2-09CV-224
	§	
AVANTEXT, INC., DON MAXWELL	§	
AVIATION SERVICES, and	§	
DYSON AVIATION,	§	
	§	
Defendants.	§	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AND WILLFUL PATENT INFRINGEMENT**

Plaintiff Aircraft Technical Publishers (“ATP”) alleges against Defendant Avantext, Inc. (“Avantext”), Defendant Don Maxwell Aviation Services (“Maxwell”), and Defendant Dyson Aviation (“Dyson”) (collectively, the “Defendants”), as follows:

NATURE OF ACTION

1. This is an action for patent infringement arising out of U.S. Letters Patent No. 5,778,381 (hereinafter the “381 Patent”) issued on July 7, 1998 and 5,987,474 issued on November 16, 1999 (hereinafter the “474 Patent”) to Michael A. Sandifer and assigned to ATP, copies of which are attached as Exhibits 1 and 2, respectively. This action is brought to remedy the infringement of the ‘381 and ‘474 Patents by Defendant Avantext, Defendant Maxwell, and Defendant Dyson, including, but not limited to, Avantext's willful direct and contributory patent infringement, as well as Avantext's inducing of others to infringe ATP's patented technology, and the Defendants’ use and exploitation of ATP’s patented technology. This action seeks

preliminary and permanent injunctive relief, compensatory and exemplary damages, attorneys' fees, and costs.

PARTIES

2. Plaintiff ATP is a California corporation with its principal office based in Brisbane, California. ATP does business within the jurisdiction and venue of this Court. ATP is in the business of, and a worldwide leader in, the reproduction of computer-based information and data concerning the airworthiness requirements and other directives relating to non-commercial aircraft. Such information is used by aircraft owners, mechanics, and others to keep their aircraft properly maintained. ATP is the owner of all right, title, and interest in the '381 and '474 Patents.

3. Defendant Avantext is, on information and belief, a Pennsylvania corporation with its principal offices in Conshohocken, Pennsylvania. Avantext is in the same industry as ATP, and, on information and belief, Avantext sells its products throughout the United States and in this District. ATP is informed and believes, and on that basis alleges, that Avantext is infringing on the '381 and '474 Patents by offering, and continuing to offer, for sale within this District at least those products designated as "AD Basic Library," "AD Small Aircraft Library," "AD Large Aircraft Library," and "Complete AD Library" and associated software (collectively, the "Infringing Products").

4. Defendant Maxwell is, on information and belief, a Texas company with principal offices in Longview, Texas. ATP is informed and believes that Maxwell is a fixed based operator who is also infringing the '381 and '474 Patents by using and otherwise exploiting the Infringing Products within this District.

5. Defendant Dyson is, on information and belief, a Texas company with its principal offices in Athens, Texas. ATP is informed and believes that Dyson is a fixed based operator who is also infringing the '381 and '474 Patents by using and otherwise exploiting the Infringing Products within this District.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, 35 U.S.C. §§ 101, et seq. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Further, this Court has jurisdiction of this action pursuant to 28 U.S.C. §1332, diversity of citizenship, as the amount in controversy exceeds the sum of \$75,000 and as the parties are citizens of and located in different states. Venue is proper in this district pursuant to 28 U.S.C. §§1391(b) - (c) and 1400(b) in that Defendants have made, used, sold, offered for sale, distributed, or otherwise commercially exploited in this District products that infringe upon the '381 and '474 Patents.

STATEMENT OF FACTS

7. ATP is informed and believes that Avantext has incorporated ATP's patented technology in products produced and marketed by Avantext under the names "AD Basic Library," "AD Small Aircraft Library ," "AD Large Aircraft Library," and "Complete AD Library," with associated software, without authorization from ATP.

8. ATP is informed and believes, and on that basis alleges, that Avantext has actual or constructive notice regarding the '381 and '474 Patents, and that Avantext has continued to use, manufacture, sell, and/or offer to sell products that infringe the '381 and '474 Patents, and/or to contribute to and/or induce others to infringe such patents.

9. ATP is informed and believes, and on that basis alleges, that Avantext has willfully, directly, and contributorily infringed the '381 and '474 Patents, and has induced others to infringe said patents through Avantext's manufacturing, use, advertising, sales, and marketing efforts.

10. ATP is informed and believes, and on that basis alleges that Defendants have used and continue to use and exploit the Infringing Products without authorization from ATP.

11. The '381 and '474 Patents have been subject to re-examination proceedings by the United States Patent and Trademark Office (the "USPTO"). On July 16, 2009, the USPTO found patentable and/or confirmed all of the claims of the '381 Patent subject to re-examination and found patentable and/or confirmed four claims of the '474 Patent subject to re-examination. A copy of the Office Action in Ex Parte Reexamination confirming the claims of the '474 Patent is attached hereto as Exhibit 3.

FIRST CLAIM FOR RELIEF
(Willful Patent Infringement)

12. Plaintiff ATP incorporates by reference each and every allegation stated in Paragraphs 1-11 above, as if fully set forth herein.

13. The '381 and '474 Patents are duly assigned to ATP. ATP is the owner of all right, title, and interest in the '381 and '474 Patents, together with all rights to sue and recover damages for all accrued and other patent infringements, whether past, present, or future.

14. ATP is informed and believes, and on that basis alleges, that Avantext is now infringing, contributorily infringing, and/or actively inducing infringement by others of at least one claim of each of the '381 and '474 Patents by making, using, offering to sell, importing into, or selling within this District and elsewhere in the United States, without license or authority from ATP, certain products or technologies that infringe the '381 and '474 Patents, at least in

connection with the “AD Basic Library,” “AD Small Aircraft Library,” “AD Large Aircraft Library,” and “Complete AD Library” and associated software.

15. ATP is informed and believes, and on that basis alleges, that by reason of the above acts, Avantext has caused, is causing, and, unless enjoined and restrained by this Court, will continue to cause ATP great and irreparable injury to, among other things, the value of the ‘381 and ‘474 Patents, the goodwill and business reputation of Plaintiff, and its business relations with customers and prospective customers, all of which cannot be adequately measured or compensated in money damages. ATP has no adequate remedy at law and is entitled to injunctive relief enjoining and restraining Defendant Avantext, its officers, agents, servants, employees, partners, licensees, affiliates, and attorneys, and those persons in active concert or participation with them, including but not limited to Avantext’s distributors, resellers, and customers, from further manufacture, sales, offers for sale, other distribution, or use of any infringing product.

16. As a direct and proximate result of Avantext’s infringement of the ‘381 and ‘474 Patents, ATP has been, and continues to be, irreparably harmed and otherwise severely damaged in an amount yet to be determined. ATP is informed and believes, and on that basis alleges, that, unless enjoined, Avantext will continue its infringing activities.

17. ATP is informed and believes, and on that basis alleges, that Avantext’s acts of patent infringement as set forth herein are and continue to be willful, malicious, wanton, and intentional, and Plaintiff is entitled to have its damages trebled pursuant to 35 U.S.C. § 284.

18. This is an exceptional case pursuant to 35 U.S.C. § 285, such that Avantext is liable to ATP for its attorneys’ fees and costs in prosecuting this action.

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SECOND CLAIM FOR RELIEF
(Patent Infringement)

19. Plaintiff ATP incorporates by reference each and every allegation stated in Paragraphs 1-18 above, as if fully set forth herein.

20. The '381 and '474 Patents are duly and legally issued by the United States Patent and Trademark Office, and assigned to ATP. ATP is the owner of all right, title, and interest in the '381 and '474 Patents, together with all rights to sue and recover damages for all accrued and other patent infringements, whether past, present, or future.

21. ATP is informed and believes, and on that basis alleges, that the Defendants are now infringing, contributorily infringing, and/or actively inducing infringement by others of at least one claim of each of the '381 and '474 Patents by making, using, offering to sell, importing into, or selling within this District and elsewhere in the United States, without license or authority from Plaintiff, certain products or technologies that infringe the '381 and '474 Patents, at least in connection with the "AD Basic Library," "AD Small Aircraft Library," "AD Large Aircraft Library," and "Complete AD Library" products and associated software.

22. ATP is informed and believes, and on that basis alleges, that by reason of the above acts, Defendants have caused, are causing, and, unless enjoined and restrained by this Court, will continue to cause ATP great and irreparable injury to, among other things, the value of the '381 and '474 Patents, the goodwill and business reputation of ATP, and its business relations with customers and prospective customers, all of which cannot be adequately measured or compensated in money damages. ATP has no adequate remedy at law and is entitled to injunctive relief enjoining and restraining Defendants, its officers, agents, servants, employees, partners, licensees, affiliates, and attorneys, and those persons in active concert or participation

with them, including but not limited to Avantext's distributors, resellers, and customers, from further manufacture, sales, offers for sale, other distribution, or use of any Infringing Products.

23. As a direct and proximate result of Defendants' infringement of the '381 and '474 Patents, ATP has been, and continues to be, irreparably harmed and otherwise severely damaged in an amount yet to be determined. ATP is informed and believes, and on that basis alleges, that, unless enjoined, Defendants will continue their infringing activities.

24. This is an exceptional case pursuant to 35 U.S.C. § 285, such that Defendants are liable to Plaintiff for its attorneys' fees and costs in prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief against Defendants as follows:

A. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, for preliminary and permanent injunctive relief enjoining Defendants, their officers, agents, servants, employees, partners, licensees, affiliates, and attorneys and those persons in active concert or participation with them including but not limited to Avantext's distributors, resellers, and customers, from further manufacture, sales, offers for sale, other distribution, or use of any Infringing Products;

B. On the First Claim for Relief, for compensatory damages in an amount to be proven at trial, for such damages resulting from Avantext's infringement to be trebled, and for attorneys' fees and costs;

C. On the Second Claim for Relief, for compensatory damages in an amount to be proven at trial and for attorneys' fees and costs;

D. For pre-judgment interest at the rate as allowed by law;

E. For Plaintiff's attorneys' fees and costs as allowed by law; and

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

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ATTORNEYS FOR PLAINTIFF

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) this 16th day of November, 2009. Any other counsel of record will be served by facsimile transmission and/or first class mail.

Amanda A. Abraham

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