

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA**

1.Sinclair-Allison, Inc.)
30680 Bainbridge Road)
Solon, Ohio 44139)

Plaintiff,)

v.)

1.Fifth Avenue Physician Services,)
LLC)
108 E. 5th Street, Suite B)
Edmond, Oklahoma 73034)

2.Fifth Avenue Agency, Inc.)
108 E. 5th Street, Suite B)
Edmond, Oklahoma 73034)

3.Primoris Credentialing Network)
108 E. 5th Street, Suite B)
Edmond, Oklahoma 73034)

4.ProFile Verification Services)
108 E. 5th Street, Suite B)
Edmond, Oklahoma 73034)

Defendants.)
_____)

CASE NO. CIV-12-360-M

JUDGE:

COMPLAINT

Patent Infringement

JURY DEMAND

Plaintiff Sinclair-Allison, Inc., brings this action for patent infringement against defendants Fifth Avenue Physician Services, LLC , Fifth Avenue Agency, Inc., Primoris Credentialing Network, and ProFile Verification Services (collectively, “Defendants”).

PARTIES

1. Plaintiff Sinclair-Allison, Inc. (“Sinclair-Allison”), is a corporation organized and existing under the laws of the State of Ohio, having its principal place of business at 30680 Bainbridge Road, Solon, Ohio 44139.

2. Upon information and belief, Defendant Fifth Avenue Physician Services, LLC, (“Fifth Services”) is an Oklahoma limited liability company having its principal place of business located at 108 E. 5th Street, Suite B, Edmond, Oklahoma 73034.

3. Upon information and belief, Defendant Fifth Avenue Agency, Inc., (“Fifth Agency”) is an Oklahoma corporation also having its principal place of business located at 108 E. 5th Street, Suite B, Edmond, Oklahoma 73034.

4. Upon information and belief, Defendant Primoris Credentialing Services (“Primoris”) is an Oklahoma business also having its principal place of business located at 108 E. 5th Street, Suite B, Edmond, Oklahoma 73034.

5. Upon information and belief, Defendant ProFile Verification Services (“ProFile”) is an Oklahoma business also having its principal place of business located at 108 E. 5th Street, Suite B, Edmond, Oklahoma 73034.

JURISDICTION AND VENUE

6. This action arises under the patent laws of the United States, 35 U.S.C. § 1 et seq. (for example, 35 U.S.C. § 271, 281, 283, and 285), for infringement of U.S. Patent Number 6,862,571 and U.S. Patent Number 7,469,214.

7. This Court has jurisdiction under 35 U.S.C. §§ 1331, 1332, and 1338.

8. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.
9. Upon information and belief, Defendants regularly transact and conduct business in this District, and, by itself or through one or more agents acting under its control and direction, has committed, and/or contributed to or induced acts of, infringement in this District.

BACKGROUND OF THE CASE

A. United States Letters Patent 6,862,571

10. David A. Martin (“Martin”) and David R. Montgomery (“Montgomery”) expended considerable time, effort, and money in developing a unique method of linking physician credentialing information with a medical malpractice insurance application, as was disclosed in the application for United States Letters Patent Serial No. 09/339,479 (filed June 24, 1999)(also, “Application ‘479”).
11. Martin and Montgomery transferred all right title and interest in Application ‘479 to The Premium Group, Inc., in an assignment document recorded on July 29, 1999 (Reel/Frame No. 017746/0528).
12. Patent Application Serial No. 09/339,479 was allowed by the United States Patent and Trademark Office, and granted United States Letters Patent No. 6,862,571 (also, “Patent ‘571”)(Exhibit 1) on March 1, 2005.

13. The Premium Group, Inc., subsequently transferred all right title and interest in Patent '571 to Sinclair-Allison, Inc., in an assignment recorded on June 9, 2006 (Reel/Frame No. 017746/0528).

14. Sinclair-Allison is the owner of all right, title, and interest in United States Letters Patent No. 6,862,571.

B. United States Letters Patent 7,469,214

15. On February 4, 2002, Martin and Montgomery filed a continuation-in-part of Application '479, which was designated as application for United States Letters Patent Serial No. 10/067,181 ("Application '181").

16. On February 7, 2002, Martin and Montgomery transferred all right title and interest in Application '181 to The Premium Group, Inc., in an assignment document recorded at Reel/Frame No. 012883/0984.

17. The Premium Group, Inc., subsequently transferred all right title and interest in Application '181 to Sinclair-Allison, Inc., in an assignment recorded on June 9, 2006 (Reel/Frame No. 017746/0528).

18. Patent Application Serial No. 10/067,181 was allowed by the United States Patent and Trademark Office, and granted United States Letters Patent No. 7,469,214 (also, "Patent '214")(Exhibit 2) on December 28, 2008.

19. Sinclair-Allison is the owner of all right, title, and interest in United States Letters Patent No. 7,469,214.

C. Summary of Patents At Issue

20. United States regulatory agencies require that health professionals have their credentials verified every two years to ensure that the public is receiving care from qualified individuals.

21. The credentialing and verification process is a time-consuming process that includes the compilation of various documents; notably, proof of a physician's completion of medical school and license to practice medicine, proof of board certification, proof of employment history, and/or proof of a valid Drug Enforcement Agency certificate.

22. Additionally, the National Committee for Quality Assurance (NCQA) sets standards for credentialing in managed care organizations.

23. In short, an NCQA credential review is a process by where a managed care organization authorizes, contracts, or employs practitioners who are licensed to practice independently and provide services to its members.

24. Managed care organizations typically contract third-parties to conduct the credentialing review.

25. A Credentials Verification Organization (CVO), which may be certified by the NCQA, will verify a practitioner's credentials for a fee.

26. In addition to being properly credentialed, physicians must maintain medical malpractice insurance.

27. Martin and Montgomery identified the similarities between the information provided in healthcare professional credentialing with the information included in an application for a medical malpractice insurance quote.

28. Broadly speaking, Patent '571 includes patented processes, and apparatuses, for compiling credentialing information and transferring said information to an application for medical malpractice insurance.

29. Broadly speaking, Patent '214 includes a patented method for ensuring current information for liability insurance underwriting, wherein associated credentialing information may be updated and analyzed to determine if a policy should be underwritten or renewed.

D. Nature of Defendants' Business and Relationships

30. Upon information and belief, Defendant Fifth Services is an Oklahoma based company that focuses on integrating services to improve the management of healthcare practices around the country.

31. Upon information and belief, Defendant Primoris provides credentialing services for healthcare providers in Oklahoma, Arkansas, Kansas, Missouri, and Texas.

32. Upon information and belief, Defendant Fifth Agency is an insurance agency offering medical malpractice insurance through its relationships with several major liability insurance carriers.

33. Upon information and belief, Defendant ProFile is a credential verification organization (CVO) offering its services nationwide.

34. Upon information and belief, Defendants Fifth Services, Primoris, ProFile, and Fifth Agency are in an agency relationship with each other.

35. True and correct copies of Defendant Fifth Services' website, located at www.fifthservices.com and attached to this Complaint as Exhibit 3, show that Fifth Services advertises that its "core service offerings" are those offered by Defendants Primoris, ProFile, and Fifth Agency.

36. As shown in Exhibit 3, Defendant Fifth Services' website advertises the services of, and contains direct links to the websites associated with, Defendants Primoris, ProFile, and Fifth Agency; while the websites associated with Primoris, Fifth Agency, and ProFile advertise and contain links to Defendant Fifth Services' website.

37. Upon information and belief, Defendant Fifth Services owns or controls Defendants Primoris and ProFile, and is partially owned by—and controls, or is controlled by—Defendant Fifth Agency.

E. Defendants' Willful Infringement Of Plaintiff's Patents

38. Upon information and belief, sometime in 2007 Defendant Fifth Agency concluded that linking information obtained in the process of healthcare professional credentialing with an application for medical malpractice insurance could offer a lucrative business opportunity.

39. Upon information and belief, Defendant Fifth Agency's investigation into the lawfulness of such services revealed Plaintiff's patents on linking credentialing information with an application for medical malpractice insurance.

40. Upon information and belief, Defendant Fifth Agency retained Oklahoma City patent attorney Mary Lee to provide an opinion of counsel on whether a proposed business arrangement and merger with Primoris would result in infringement of Plaintiff's patent(s).

41. Upon information and belief, attorney Lee informed Fifth Agency that the proposed business arrangement would infringe upon Plaintiff's patent(s).

42. Upon information and belief, sometime in the summer or fall of 2007, the president of Fifth Agency, James J. Feist, contacted Plaintiff Sinclair-Allison and requested that Fifth Agency be granted a license to practice the patented processes covered by Patent '571 and Patent '214.

43. Sinclair-Allison refused Fifth Agency's request to license Patent '571 and/or Patent '214 to Fifth Agency.

44. Upon information and belief, Fifth Agency willfully disregarded Plaintiff's refusal to offer a patent license, and subsequently arranged, and/or entered into, agency relationships with Defendants Fifth Services, Primoris, and ProFile to offer services that infringe, and/or are contributing to or inducing the infringement of, Plaintiff's Patent '571 and Patent '214.

45. Plaintiff Sinclair-Allison's investigation into the "core services" offered by Defendant Fifth Services, and its affiliates, agents, and/or subsidiaries (Defendants Primoris, Fifth Agency, and ProFile) revealed that at least all of the claim limitations of at least one Patent '571 claim are being performed by Defendants, and as a result

Defendants are infringing, and/or are contributing to or inducing the infringement of, Plaintiff's patent rights.

46. Sinclair-Allison did not give Defendants permission to practice the invention covered by United States Letters Patent No. 6,862,571.

47. Plaintiff Sinclair-Allison's investigation into the "core services" offered by Defendant Fifth Services, and its affiliates, agents, and/or subsidiaries (Defendants Primoris, Fifth Agency, and ProFile) revealed that at least all of the claim limitations of at least one Patent '214 claim are being performed by Defendants, and as a result Defendants are infringing, and/or are contributing to or inducing the infringement of, Plaintiff's patent rights.

48. Sinclair-Allison did not give Defendants permission to practice the invention covered by United States Letters Patent No. 7,469,214.

49. Upon information and belief, as of the filing date of the above-captioned action, Defendants continue to market and sell services, within this district and elsewhere, which infringe Patent '571 and Patent '214.

50. As a result of Defendants' competitive activities and infringement, Sinclair-Allison has suffered and will continue to suffer grievous damage unless and until enjoined by this Court.

FIRST CLAIM FOR RELIEF
(Infringement of U.S. Patent 6,862,571)

51. The allegations of paragraphs 1-49 are incorporated for this Count I as though

fully set forth herein.

52. Sinclair-Allison is the owner of all right, title, and interest in and to United States Letters Patent 6,862,571 (Patent '571)(Exhibit 1) entitled "Credentialer/Medical Malpractice Insurance Collaboration."

53. Patent '571 was duly issued by the United States Patent and Trademark Office, and is valid and enforceable.

54. Upon information and belief, Defendants use, sell, and/or offer for sale services that infringe claims of Patent '571.

55. Upon information and belief, Defendants are willfully infringing, and/or are contributing to or inducing the infringement of, one or more claims of Patent '571 by using, selling and/or offering to sell infringing services in the United States.

56. By reason of said acts by Defendants, Sinclair-Allison has been, and will continue to be, seriously damaged and irreparably injured unless Defendants are preliminarily and permanently enjoined by this Court from the actions complained of herein, and thus Sinclair-Allison is without adequate remedy at law.

SECOND CLAIM FOR RELIEF
(Infringement of U.S. Patent 7,469,214)

57. The allegations of paragraphs 1-55 are incorporated for this Count II as though fully set forth herein.

58. Sinclair-Allison is the owner of all right, title, and interest in and to United States Letters Patent 7,469,214 (Patent '214)(Exhibit 2) entitled "Method Of Medical

Malpractice And Insurance Collaboration.”

59. Patent ‘214 was duly issued by the United States Patent and Trademark Office, and is valid and enforceable.

60. Upon information and belief, Defendants use, sell, and/or offer for sale services that infringe claims of Patent ‘214.

61. Upon information and belief, Defendants are willfully infringing, and/or are contributing to or inducing the infringement of, one or more claims of Patent ‘214 by using, selling and/or offering to sell infringing services in the United States.

62. By reason of said acts by Defendants, Sinclair-Allison has been, and will continue to be, seriously damaged and irreparably injured unless Defendants are preliminarily and permanently enjoined by this Court from the actions complained of herein, and thus Sinclair-Allison is without adequate remedy at law.

REQUEST FOR RELIEF

WHEREFORE, Sinclair-Allison prays for the entry of a judgment by this Court against Defendants:

A. declaring that Defendants have infringed United States Letters Patent Nos. 6,862,571 and 7,469,214;

B. ordering that Defendants, their officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with Defendants, be preliminarily and permanently enjoined and restrained from further infringing Sinclair-Allison’s United States Letters Patent Nos. 6,862,571 and 7,469,214 during its term;

C. awarding damages, together with interest, to compensate Sinclair-Allison for the past infringement by Defendants of United States Letters Patent Nos. 6,862,571 and 7,469,214;

D. awarding Sinclair-Allison prejudgment interest according to law;

E. finding this to be an exceptional case, and directing that Defendants pay Sinclair-Allison treble damages, the costs of this action, and its reasonable attorneys fees pursuant to 35 U.S.C. §284-285; and

F. for such other relief as this Court deems just and proper.

Dated April 2, 2012.

s/Kenneth T. McConkey

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DEMAND FOR JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Plaintiff, Sinclair-Allison, hereby demands a trial by jury on all issues triable by a jury.

Dated: April 2, 2012

KLINGENBERG & ASSOCIATES, P.C.

s/Kenneth T. McConkey