

ORIGINAL

**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

U.S. DISTRICT COURT NORTHERN DISTRICT OF TEXAS FILED SEP 15 2006 CLERK, U.S. DISTRICT COURT By <u> NB </u> Deputy
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TYLER TECHNOLOGIES, INC.,

Plaintiff,

v.

**VIRTUAL IMPACT PRODUCTIONS,
INC.,**

Defendant.

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CIVIL ACTION NO.

4183

3-06CV1693-P

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, Tyler Technologies, Inc. ("Tyler") files this Original Complaint against Defendant, Virtual Impact Productions, Inc. ("VIP"), and for its causes of action would show the Court the matters set forth below.

The Parties

1. Tyler is a corporation formed under the laws of the State of Delaware, with its principal place of business located at 5949 Sherry Lane, Suite 1400, Dallas, Texas 75225.
2. VIP is a Florida corporation having a principal place of business at 607 St. Andrews Drive, Sarasota, Florida 34243.

Jurisdiction and Venue

3. This case is an action for declaratory judgment pursuant to Title 28, United States Code, §§ 2201-2202 and Title 35, United States Code, § 101 *et seq.*, as to non-infringement of alleged patent rights and an action for declaratory judgment for related state law causes of action, some of which necessarily depend on resolution of a substantial question of federal patent law. In addition, the Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(1) because the matter in controversy exceeds \$75,000.00, exclusive of interests and costs, and is between

citizens of different States. In sum, the Court has subject matter jurisdiction pursuant to 28 U.S.C. § § 1331, 1332, 1338, 2201, and, to the extent necessary, 1367.

4. Venue is proper within this judicial district and division under 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in Dallas County.

Background Facts

5. Tyler designs, develops and markets software products for use by local governments.

6. Tyler received a letter from VIP dated September 7, 2006. A true and correct copy of the September 7, 2006 letter is attached hereto as Exhibit "A" and is incorporated herein by reference for all purposes.

7. In the letter, VIP accuses Tyler of infringing its patent for a "virtual school environment" by "aggressively marketing the proprietary technology Virtual." Exhibit A at 1. VIP states that it is the owner of U.S. Patent No. 6,505,031 (the "'031 Patent"). *Id.*

8. VIP further asserts that "Tyler has severely damaged the patent of Virtual" through Tyler's application of the virtual school environment "as is protected in United States Patent 6,505,031." Exhibit A at 2 (emphasis in original). VIP alleges that it "is damaged because it cannot exclusively market its patent." *Id.* VIP also states that it will suffer "negative tax consequences in the loss of exclusivity of the patent to Virtual." *Id.*

Request For Declaratory Judgment

9. By virtue of VIP's actions, including threats of litigation, accusations of infringement, and allegations of damages suffered, a reasonable apprehension exists on Tyler's behalf that Tyler will be wrongfully sued by VIP for infringement of the '031 Patent. An actual

controversy therefore exists between the parties with respect to whether Tyler's actions, if any, infringe any valid claim of the '031 Patent.

10. Tyler requests a declaration that its actions do not infringe the '031 Patent.

11. By virtue of VIP's actions, including threats of litigation, accusations of unspecified contract and/or tort violations, and allegations of damages suffered, a reasonable apprehension exists on Tyler's behalf that Tyler will be wrongfully sued by VIP. An actual controversy therefore exists between the parties.

12. Tyler requests a declaration that it has not damaged VIP by any state law cause of action.

Prayer

WHEREFORE, Tyler prays:

- (a) that the Court declare that Tyler's actions do not infringe the '031 Patent;
- (b) that the Court declare that Tyler's actions do not support any state law causes of action by VIP based in tort and/or contract;
- (c) that Tyler be awarded its costs of court;
- (d) that Tyler be awarded its attorneys' fees; and
- (e) that Tyler be awarded its such other and further relief as this Court shall deem just and proper.

Respectfully submitted,

HUGHES & LUCE, L.L.P.



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Megan K. Dredla
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**ATTORNEYS FOR PLAINTIFF TYLER
TECHNOLOGIES, INC.**

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Attorney and Counselor at Law

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TELEPHONE (352) 867-0766
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ALSO ADMITTED IN NORTH CAROLINA
FLORIDA BOARD CERTIFIED CRIMINAL TRIAL ATTORNEY

September 7, 2006

FEDERAL EXPRESS AND
CERTIFIED MAIL RETURN
RECEIPT REQUESTED

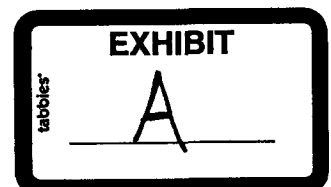
John S. Marr, Jr.
President and CEO
Tyler Technologies, Inc.
5949 Sherry Lane
Suite 1400
Dallas, TX 75225

Dear Mr. Marr:

This firm represents the interests of Virtual Impact Productions, Inc., Michelle Robinson and Robert Slider (herein collectively referenced as "Virtual"), in the sale of its United States Patent **6,505,031**, a system for providing a "virtual school environment". Of course, this term need not be defined in that Tyler Technologies, Inc., (herein "Tyler") knows precisely the meaning and application of this term.

Virtual was deeply concerned and dismayed to learn from the firm brokering the sale of the referenced exclusive patent, that Virtual Impact Productions, Inc., is not only listed as a partner with Tyler upon the website of Tyler, but that Tyler is aggressively marketing the proprietary technology Virtual. An immediate investigation was launched and has revealed this "partnership" has no basis in law or fact. No one from Virtual has made any such agreement or alliance much less had any contact with your company. By what right, license, title, or interest does Tyler advertise such claim to the stockholders, governmental entities, and other institutions? This representation is false and is the corporate fingerprint of Tyler's long trail of misdeeds which continue to damage the interests of Virtual.

Tyler acquired Mazik USA, a company which attempted but failed to come to any agreement with Virtual regarding the purchase or the use in any way shape or form of the patent of Virtual. Notwithstanding their warranties in the 8-K, Mazik USA could not sell



to Tyler that which it did not possess. In short, even the most cursory review of the facts surrounding Tyler's application of the "virtual school environment" clearly establishes that Tyler has severely damaged the patent of Virtual. Tyler has "virtually hijacked" the virtual school environment of Virtual and its interest as is protected in United States Patent 6,505,031. There is no excuse as to why this situation could not have been totally avoided had due diligence been exercised before acquiring Mazik USA. What could be more transparent than the evidentiary fact that your website contains a link to the patent of Virtual? Who is responsible for such a debacle that is daily damaging the interests of Virtual?

Virtual is damaged because it cannot exclusively market its patent and cannot fulfill its legal obligations to the firm brokering the patent. This fails to even take into account the negative tax consequences in the loss of exclusivity of the patent to Virtual. Tyler has at best been negligent in its due diligence which is the direct and proximate cause of the mounting damages to Virtual. This calls for the immediate attention of Tyler if it expects to avoid dire consequences.

Virtual demands that Tyler contact this law firm within three (3) business days of the receipt of this letter and coordinate a meeting to discuss and resolve our mutual concerns. Should you fail to contact this office, Virtual will exercise any legal, administrative, or regulatory option in order to redress this outrage.

I trust our position upon this matter is clear.

Sincerely

A handwritten signature in black ink, appearing to read "Charles R. Holloman". The signature is written in a cursive, flowing style.

Charles R. Holloman, PA

cc: Glenn A. Smith
Executive Vice President
Tyler Technologies, Inc.
5949 Sherry Lane
Suite 1400
Dallas, TX 75225

JS 44 (Rev 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS</p> <p>TYLER TECHNOLOGIES, INC.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Dallas County, Texas</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) <u>JOHN W. PATTON, MEGAN K. DREDLA Hughes & Luce, LLP 1717 Main Street, Suite 2800, Dallas, TX 75201 (214) 939-5500</u></p>	<p>DEFENDANTS</p> <p>VIRTUAL IMPACT PRODUCTIONS, INC</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (if Known) _____</p>
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RECEIVED
 SEP 15 2006
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF TEXAS

3-06 CV 1693-P

<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p>		<p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>		<p>CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p>	
		<p>PTF DEF</p> <p>Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1</p> <p>Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3</p>	<p>PTF DEF</p> <p>Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4</p> <p>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5</p> <p>Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6</p>		

IV. NATURE OF SUIT (Place an "X" in One Box Only)			
<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans)</p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <table border="0" style="width:100%;"> <tr> <td style="width:50%;"> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> </td> <td style="width:50%;"> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 362 Personal Injury - Med Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p> </td> </tr> </table> <p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prson Condition</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 362 Personal Injury - Med Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>
<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 362 Personal Injury - Med Malpractice</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>		
<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/ Accommodations</p> <p><input type="checkbox"/> 444 Welfare</p> <p><input type="checkbox"/> 445 Amer w/Disabilities-Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities-Other</p> <p><input type="checkbox"/> 440 Other Civil Rights</p>		
	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture</p> <p><input type="checkbox"/> 620 Other Food & Drug</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 630 Liquor Laws</p> <p><input type="checkbox"/> 640 R R & Truck</p> <p><input type="checkbox"/> 650 Airline Regs</p> <p><input type="checkbox"/> 660 Occupational Safety/Health</p> <p><input type="checkbox"/> 690 Other</p>		
	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input checked="" type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 840 Trademark</p>		
	<p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Mgmt Relations</p> <p><input type="checkbox"/> 730 Labor/Mgmt Reporting & Disclosure Act</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Emp Ret Inc Security Act</p>		
	<p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1395ff)</p> <p><input type="checkbox"/> 862 Black Lung (923)</p> <p><input type="checkbox"/> 863 DIWC/DIWW (405)(g))</p> <p><input type="checkbox"/> 864 SSID Title XVI</p> <p><input type="checkbox"/> 865 RSI (405(g))</p>		
	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 810 Selective Service</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input type="checkbox"/> 875 Customer Challenge 12 USC 3410</p> <p><input type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 892 Economic Stabilization Act</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 894 Energy Allocation Act</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>		

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify) _____

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. §§ 2201-2202 and 35 U.S.C. § 101, et seq.

Brief description of cause:
Declaratory judgment as to non-infringement of alleged patent rights and a declaratory judgment for related state law causes of action that necessarily depend on resolution of a substantial question of federal patent law and arise under patent law

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____ **Declaratory relief plus attorney's fees and costs.**

CHECK YES only if demanded in complaint:

JURY DEMAND Yes No

VIII. RELATED CASE(S) IF ANY (See instructions) **JUDGE** _____ **DOCKET NUMBER** _____

DATE 09/15/06 SIGNATURE OF ATTORNEY OF RECORD _____

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____