

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

Robocast, Inc.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 10-cv-1055-RGA
	)	
Microsoft Corporation,	)	<b>JURY TRIAL DEMANDED</b>
	)	
Defendant.	)	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

1. This is an action for patent infringement by Robocast, Inc. (“Robocast”) against Microsoft Corporation (“Microsoft”) for infringement of United States Patent No. 7,155,451 (the “451 patent”), under 35 U.S.C. § 271. By and through its undersigned counsel, Robocast alleges as follows:

**THE PARTIES**

2. Plaintiff Robocast is a Delaware corporation with its place of business in New York, NY.

3. Defendant Microsoft is a Washington State corporation with its principal place of business at One Microsoft Way, Redmond, Washington 98052. Microsoft’s registered agent for service in Delaware is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

**JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b).

6. On information and belief, defendant has transacted and does transact business within the State of Delaware, and has committed, contributed to, and/or induced acts of patent infringement in Delaware. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Delaware Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringement alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Delaware.

### **BACKGROUND**

7. Robocast, and its founder, Damon Torres, pioneered the use of automated web browsing in the 1990's, when the World Wide Web was still in its infancy. Mr. Torres envisioned and implemented a new paradigm for the web browsing experience, and his inventions are described in the '451 patent here at issue.

8. The original application for what became the '451 patent was filed as provisional patent application No. 60/025,360 on September 3, 1996. The '451 patent issued on December 26, 2006, after the Board of Patent Appeals and Interferences unanimously reversed the examiner's rejections. Due to the delays within the Patent Office, the term of the '451 patent was extended by 1072 days.

9. At the time of the invention, Web users were limited in their ability to access content from the Web. The experience was characterized by the computer-centric, point-and-click model for selecting and retrieving web pages.

10. Mr. Torres foresaw the far broader potential of the Web as a medium for content delivery that functioned more like television, but with the significant benefits provided by user interactivity and control, and the vast resources accessible via the Internet.

11. From this perspective of the Internet, Robocast developed and deployed for numerous customers its unique automated browsing tools, which enabled users to access a plurality of Web-accessible resources with a single click of the mouse.

12. Robocast developed and implemented a number of software applications utilizing the technology described in the '451 patent, including Robocaster, RoboGuide, RoboMobile, RoboPublisher, RoboSearch, RoboStats, and RoboSurf.

13. By 2001, Robocast's lists of customers and partners included well-known names such as Hachette Filipacchi, the world's largest special interest publisher whose offerings included Premiere and Car and Driver; ZDNet's News.com, a technology news site; and InfoSpace, which partnered on the launch of RoboSearch using the search site Metacrawler and other resources.

14. The value and success of Robocast's automated web browsing tools was demonstrated by, for example, data collected from customer sites, which showed an increase in time spent on the sites, number of page views, and number of advertisements viewed, all of which translate to increased advertising revenues.

15. It wasn't long before Robocast caught Microsoft's attention. By 2000, Microsoft expressed great interest in Robocast's technology, and Microsoft and Robocast entered into a Non-disclosure Agreement in or about August 2000.

16. The Non-disclosure Agreement did not grant Microsoft any rights to use Robocast's proprietary technology, including that covered by the '451 patent.

17. On or about August 2001, Robocast joined Microsoft's Microsoft TV Content Builder Initiative, part of Microsoft's effort to build its interactive television business.

18. At Microsoft's request, Robocast provided Microsoft with access to substantial confidential information concerning Robocast's technology.

19. Sometime prior to the December-2001 time frame, two Microsoft employees visited Robocast's offices in New York City to review Robocast's proprietary technology, including the technology of the '451 patent.

20. Based on information learned by Microsoft concerning the technology of the '451 patent, including confidential information, Microsoft entered into business discussions with Robocast, including discussions concerning a possible acquisition of Robocast.

21. Discussions between Robocast and Microsoft concerning a possible business transaction continued through approximately 2001. Microsoft participated in meetings with Robocast through a number of high-ranking executives. In connection with these discussions, Damon Torres was invited to multiple meetings at Microsoft's headquarters in Redmond, Washington.

22. Throughout the course of Robocast's extensive discussions with Microsoft, Microsoft gained significant information concerning Robocast's now-patented technology.

23. Microsoft recognized that Robocast's technology was a key component of its television business strategy. On December 6-7, 2001, Microsoft held a Developer Conference in Silicon Valley, California to unveil a new version of its Microsoft TV Advanced client software used to develop interactive television content and applications.

24. Robocast was part of the Microsoft TV Content Builder Initiative Program, and was invited to participate in the conference and showcase its technology.

25. Microsoft prominently featured Robocast in its press release announcing the conference, praising Robocast as a “pioneering Web company.”

26. No business transaction was concluded between Robocast and Microsoft. Rather, after gaining access to Robocast’s proprietary technology, and realizing its tremendous value to Microsoft’s business, Microsoft simply decided to appropriate Robocast’s technology as its own.

27. Microsoft’s use of Robocast’s patented technology is extensive, as it has incorporated Robocast’s patented technology into a number of diverse products, including at least its Bing search product, Windows Vista operating systems, and its msn.com Web site.

#### **CLAIM FOR PATENT INFRINGEMENT**

28. Robocast incorporates by reference paragraphs 1- 27 as if fully set forth herein.

29. On December 26, 2006, United States Patent No. 7, 155,451 entitled “Automated Browsing System for Publishers and Users on Networks Serving Internet and Remote Devices” was duly and legally issued to Damon Torres after full and fair examination. Robocast is the owner of all right, title, and interest in and to the ‘451 patent. A copy of the ‘451 patent is attached as Exhibit A.

30. On information and belief, Microsoft has infringed and is infringing the ‘451 patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, directly and/or indirectly.

31. On information and belief, Microsoft has infringed and is infringing the '451 patent by performing, without authority, one or more of the following acts: making, using, offering to sell, selling within, and importing into, the United States products and services that practice the claimed inventions of the '451 patent, including but not limited to Bing, Windows Vista, and msn.com.

32. On information and belief, Microsoft has knowledge of the '451 patent based at least on the following facts. First, Microsoft learned of the applications that led to the '451 patent from its prior discussions with Robocast concerning the technology described therein. Second, in March 1999, the World Intellectual Property Organization published Mr. Torres's international patent application (disclosing the inventions of the '451 patent) as International Publication Number WO 99/12109. This international patent application corresponds to one of the United States patent applications that led to the '451 patent, No. 08/922,063, which is referenced on the face of the international application. Microsoft had knowledge of WO 99/12109 at least as early as July 2005, when Microsoft itself cited WO 99/12109 as prior art to Microsoft's own United States patent application, which issued as United States Patent Number 7,181,701. Similarly, Microsoft again cited WO 99/12109 as prior art during the prosecution of at least two other United States patents owned by Microsoft: Nos. 7,593,755 and 7,792,121. Microsoft's citation of WO 99/12109 in these latter two patents occurred in March 2008, and January 2010, respectively, in both cases after issuance of the '451 patent. On information and belief, Microsoft learned of the '451 patent from its knowledge and consideration of WO 99/12109 in connection with Microsoft's pursuit of its own patent rights. Finally, Microsoft is being provided with a copy of this Complaint upon its filing.

33. On information and belief, Microsoft has contributed and is contributing to the infringement of the '451 patent because Microsoft knows that the infringing aspects of its infringing products and services, including but not limited to Bing, Windows Vista, and msn.com, are made for use in an infringement, and are not staple articles of commerce suitable for substantial non-infringing uses.

34. On information and belief, Microsoft has induced and is inducing the infringement of the '451 patent, with knowledge of the '451 patent and the intent that its acts, including without limitation using, offering to sell, selling within, and importing into the United States, Bing, Windows Vista, and msn.com, would induce infringement by end users of the foregoing.

35. Microsoft's acts of infringement have caused damage to Robocast, and Robocast is entitled to recover damages from Microsoft in an amount subject to proof at trial.

36. Microsoft's infringement of Robocast's rights under the '451 patent will continue to damage Robocast's business, causing irreparable harm, for which there is no adequate remedy at law, unless enjoined by this Court.

37. On information and belief, Microsoft has acted with disregard of Robocast's patent rights, without any reasonable basis for doing so, and has willfully infringed and does willfully infringe the '451 patent.

**DEMAND FOR JURY TRIAL**

38. Robocast hereby demands a jury for all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Robocast prays for the following relief:

1. A judgment that Microsoft has directly infringed the '451 patent, contributorily infringed the '451 patent, and/or induced the infringement of the '451 patent;
2. A preliminary and permanent injunction preventing Microsoft and its officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and/or inducing the infringement of the '451 patent;
3. A judgment that Microsoft's infringement of the '451 patent has been willful;
4. An award of attorneys' fees incurred in prosecuting this action, on the basis that this is an exceptional case;
5. A judgment and order requiring Microsoft to pay Robocast damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;
6. A judgment and order requiring Microsoft to pay Robocast the costs of this action (including all disbursements);
7. A judgment and order requiring Microsoft to pay Robocast pre-judgment and post-judgment interest on the damages awarded;
8. A judgment and order requiring that in the event a permanent injunction preventing future acts of infringement is not granted, that Robocast be awarded a compulsory ongoing licensing fee; and



9. Such other and further relief as the Court may deem just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Thomas C. Grimm*

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