

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DATATERN, INC.,

Plaintiff,

v.

1. ELI LILLY AND COMPANY,
2. AFLAC, INC.,
3. ALLSCRIPTS HEALTHCARE SOLUTIONS, INC.,
4. VOLKSWAGEN GROUP OF AMERICA, INC.,
5. IRON MOUNTAIN, INC.,
6. WALGREEN COMPANY,
7. AT&T, INC.,
8. VERIZON COMMUNICATIONS, INC.,
and
9. THOMSON REUTERS CORPORATION,

Defendants.

Civil No. 2:10-cv-00413-DF-CMC

JURY TRIAL DEMANDED

PLAINTIFF'S SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, DataTern, Inc. ("DataTern") hereby files this Second Amended Complaint for Patent Infringement pursuant to Federal Rule of Civil Procedure 15(a). In this action for patent infringement, DataTern complains of Defendants Aflac, Inc. ("Aflac"), Allscripts Healthcare Solutions, Inc. ("Allscripts"), Volkswagen Group of America, Inc. ("VW"), Iron Mountain, Inc. ("Iron Mountain"), Walgreen Company ("Walgreens"), AT&T, Inc. ("AT&T"), Verizon Communications, Inc. ("Verizon"), and Thomson Reuters Corporation ("Thomson Reuters") as follows:

NATURE OF LAWSUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code § 1 *et seq.* This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a).

PARTIES

2. Plaintiff DataTern, Inc. (“DataTern”) is a Texas corporation pursuant to Chapter 10 of the Texas Business Organizations Code and is doing business in this district.
3. On information and belief, Defendant Aflac is a Georgia corporation with its principal place of business at 1932 Wynnton Road, Columbus, GA 31999.
4. On information and belief, Defendant Allscripts (f/k/a/ Allscripts-Misys Healthcare Solutions, Inc.) is a Delaware corporation with its principal place of business at 222 Merchandise Mart Plaza, Suite 2024, Chicago, IL 60654.
5. On information and belief, Defendant VW is a New Jersey corporation with its principal place of business at 2200 Ferdinand Porsche Drive, Herndon, VA 20171. VW is authorized to do business in the State of Texas and has appointed CT Corp System at 350 North St. Paul Street, Suite 2900, Dallas, TX 75201 as its agent for service of process.
6. On information and belief, Defendant Iron Mountain is a Delaware corporation with its principal place of business at 745 Atlantic Avenue, Boston, MA 02111. Iron Mountain is authorized to do business in the State of Texas and has appointed Corporation Service Company at 211 East 7th Street, Suite 620, Austin, TX 78701 as its agent for service of process.

7. On information and belief, Defendant Walgreens is a Delaware corporation with its principal place of business at 200 Wilmot Road, Deerfield, IL 60015. Walgreens is authorized to do business in the State of Texas and has appointed Prentice Hall Corp. System at 211 East 7th Street, Suite 620, Austin, TX 78701 as its agent for service of process.
8. On information and belief, Defendant AT&T is a Delaware corporation with its principal place of business at 208 South Akard Street, Dallas, TX 75202. AT&T is authorized to do business in the State of Texas and has appointed CT Corporation System at 350 North St. Paul Street, Suite 2900, Dallas, TX 75201 as its agent for service of process.
9. On information and belief, Defendant Verizon is a Delaware corporation with its principal place of business at 140 West Street, 29th Floor, New York, NY 10007. Verizon subsidiaries and affiliates, including GTE Southwest Incorporated and Verizon Data Services LLC, are authorized to do business in the State of Texas. GTE Southwest Incorporated has appointed CT Corporation System at 350 North St. Paul Street, Suite 2900, Dallas, TX 75201 as its agent for service of process.
10. On information and belief, Defendant Thomson Reuters is a corporation formed in Ontario, Canada with its principal place of business at 3 Times Square, New York, NY 10036. Several divisions of Thomson Reuters are authorized to do business in the State of Texas, including Thomson Reuters Healthcare, Inc., Thomson Reuters Applications, Inc., Thomson Reuters Markets LLC, and Thomson Reuters Holdings, Inc. The Markets and Holdings divisions of Thomson Reuters has appointed Corporation Service Company d/b/a CSC Lawyers Incorporating Service Company at 211 East 7th Street, Suite 620, Austin, TX 78701 as their agent for service of process. Thomson Reuters subsidiary,

West Publishing Corporation (a Minnesota Corporation), is authorized to do business in the State of Texas and has appointed Corporation Service Company at 211 E. 7th Street, Suite 620, Austin, TX 78701 as its agent for service of process.

JURISDICTION AND VENUE

11. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).
12. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, each Defendant has transacted business in this district.
13. On information and belief, Defendant Aflac is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (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 Texas and in this Judicial District. For example, Aflac employs agents throughout the State of Texas including Plano, Texas.
14. On information and belief, Defendant Allscripts is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (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 Texas and in this Judicial District. For example, on information and belief, the Tyler, Texas-based Regional Health Information

Organization deployed Allscripts's solutions to several physicians in numerous medical clinics.

15. On information and belief, Defendant VW is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statue, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (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 Texas and in this Judicial District. For example, VW maintains an office at 610 S. Exit 29, Houston, TX 77029.
16. On information and belief, Defendant Iron Mountain is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statue, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (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 Texas and in this Judicial District. For example, Iron Mountain employs workers throughout the State of Texas, including Carrollton, Irving, Austin, El Paso, and Dallas.
17. On information and belief, Defendant Walgreens is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statue, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (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 Texas and in this Judicial District. For example, Walgreens currently has four retail stores open in Tyler, Texas alone.

18. On information and belief, Defendant AT&T is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statue, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (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 Texas and in this Judicial District. For example, AT&T's principal place of business is Dallas, TX.
19. On information and belief, Defendant Verizon is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statue, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (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 Texas and in this Judicial District. For example, Verizon serves more than 3 million accounts in the State of Texas, has 372 buildings or locations in Texas, employs 13,801 workers in Texas, and pays roughly \$130 million annually in Texas state taxes.
20. On information and belief, Defendant Thomson Reuters is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Texas Long Arm Statue, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and/or (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 Texas and in this Judicial District. For example, Thomson Reuters maintains offices in Forth Worth, Carrollton, and Austin, Texas.

COUNT 1

INFRINGEMENT OF U.S. PATENT NO. 5,937,402

21. Plaintiff is the owner by assignment of United States Patent No. 5,937,402 entitled "System for Enabling Access to a Relational Database from an Object Oriented Program" (the "'402 Patent"). The '402 Patent issued on August 10, 1999. A true and correct copy of the '402 Patent is attached as Exhibit A.
22. On information and belief, Defendant Aflac has been and now is directly infringing one or more method claims of the '402 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems that access a relational database through the use of methods covered by one or more claims of the '402 Patent to the injury of DataTern. Defendant Aflac is thus liable for infringement of the '402 patent pursuant to 35 U.S.C. § 271.
23. On information and belief, Defendant Allscripts has been and now is directly infringing one or more method claims of the '402 Patent in the United States by, among other things, making, operating, and maintaining object oriented software applications and systems that access a relational database through the use of methods covered by one or more claims of the '402 Patent to the injury of DataTern. Defendant Allscripts is thus liable for infringement of the '402 patent pursuant to 35 U.S.C. § 271.
24. On information and belief, Defendant VW has been and now is directly infringing one or more method claims of the '402 Patent in the United States, by, among other things,

making, operating, and maintaining object oriented software applications and systems that access a relational database through the use of methods covered by one or more claims of the '402 Patent to the injury of DataTern. Defendant VW is thus liable for infringement of the '402 Patent pursuant to 35 U.S.C. § 271.

25. On information and belief, Defendant AT&T has been and now is directly infringing one or more method claims of the '402 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems that access a relational database through the use of methods covered by one or more claims of the '402 Patent to the injury of DataTern. Defendant AT&T is thus liable for infringement of the '402 patent pursuant to 35 U.S.C. § 271.

26. On information and belief, Defendant Verizon has been and now is directly infringing one or more method claims of the '402 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems that access a relational database through the use of methods covered by one or more claims of the '402 Patent to the injury of DataTern. Defendant Verizon is thus liable for infringement of the '402 patent pursuant to 35 U.S.C. § 271.

27. On information and belief, Defendant Thomson Reuters has been and now is directly infringing one or more method claims of the '402 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems that access a relational database through the use of methods covered by one or more claims of the '402 Patent to the injury of DataTern. Defendant Thomson Reuters is thus liable for infringement of the '402 patent pursuant to 35 U.S.C. § 271.

28. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '402 Patent complied with any such requirements.
29. To the extent that facts learned in discovery show that the Count I Defendants' infringement of the '402 Patent is, or has been willful, Plaintiff reserves the right to request such a finding at the time of trial.
30. As a result of Defendants' infringement of the '402 Patent, Plaintiff has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Count I Defendants' infringing activities are enjoined by this Court.
31. Unless a permanent injunction is issued enjoining these Count I Defendants and their agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '402 Patent, Plaintiff will be greatly and irreparably harmed.

COUNT 2

INFRINGEMENT OF U.S. PATENT NO. 6,101,502

32. Plaintiff is the owner by assignment of United States Patent No. 6,101,502 entitled "Object Model Mapping and Runtime Engine for Employing Relational Database with Object Oriented Software" (the "'502 Patent"). The '502 Patent issued on August 8, 2000. A true and correct copy of the '502 Patent is attached as Exhibit B.
33. On information and belief, Defendant Aflac has been and now is directly infringing one or more method claims of the '502 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems which interface with a relational database through the use of methods covered by one or

more claims of the '502 Patent to the injury of DataTern. Defendant Aflac is thus liable for infringement of the '502 patent pursuant to 35 U.S.C. § 271.

34. On information and belief, Defendant Allscripts has been and now is directly infringing one or more method claims of the '502 Patent in the United States by, among other things, making, operating, and maintaining object oriented software applications and systems which interface with a relational database through the use of methods covered by one or more claims of the '502 Patent to the injury of DataTern. Defendant Allscripts is thus liable for infringement of the '502 patent pursuant to 35 U.S.C. § 271.
35. On information and belief, Defendant VW has been and now is directly infringing one or more method claims of the '502 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems which interface with a relational database through the use of methods covered by one or more claims of the '502 Patent to the injury of DataTern. Defendant VW is thus liable for infringement of the '502 patent pursuant to 35 U.S.C. § 271.
36. On information and belief, Defendant Iron Mountain has been and now is directly infringing one or more method claims of the '502 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems which interface with a relational database through the use of methods covered by one or more claims of the '502 Patent to the injury of DataTern. Defendant Iron Mountain is thus liable for infringement of the '502 patent pursuant to 35 U.S.C. § 271.
37. On information and belief, Defendant Walgreens has been and now is directly infringing one or more method claims of the '502 Patent in the United States, by, among other

things, making, operating, and maintaining object oriented software applications and systems which interface with a relational database through the use of methods covered by one or more claims of the '502 Patent to the injury of DataTern. Defendant Walgreens is thus liable for infringement of the '502 patent pursuant to 35 U.S.C. § 271.

38. On information and belief, Defendant AT&T has been and now is directly infringing one or more method claims of the '502 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems which interface with a relational database through the use of methods covered by one or more claims of the '502 Patent to the injury of DataTern. Defendant AT&T is thus liable for infringement of the '502 patent pursuant to 35 U.S.C. § 271.

39. On information and belief, Defendant Verizon has been and now is directly infringing one or more method claims of the '502 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems which interface with a relational database through the use of methods covered by one or more claims of the '502 Patent to the injury of DataTern. Defendant Verizon is thus liable for infringement of the '502 patent pursuant to 35 U.S.C. § 271.

40. On information and belief, Defendant Thomson Reuters has been and now is directly infringing one or more method claims of the '502 Patent in the United States, by, among other things, making, operating, and maintaining object oriented software applications and systems which interface with a relational database through the use of methods covered by one or more claims of the '502 Patent to the injury of DataTern. Defendant Thomson Reuters is thus liable for infringement of the '502 patent pursuant to 35 U.S.C. § 271.

41. On information and belief, to the extent any marking was required by 35 U.S.C. § 287, all predecessors in interest to the '502 Patent complied with any such requirements.
42. To the extent that facts learned in discover show that Count II Defendants' infringement of the '502 Patent is, or has been willful, Plaintiff reserves the right to request such a finding at the time of trial.
43. As a result of Defendants' infringement of the '502 Patent, Plaintiff has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Count II Defendants' infringing activities are enjoined by this Court.
44. Unless a permanent injunction is issued enjoining these Count II Defendants and their agents, servants, employees, representatives, affiliates, and all others acting in active concert therewith from infringing the '502 Patent, Plaintiff will be greatly and irreparably harmed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff DataTern, Inc. respectfully requests that this Court enter judgment against each Defendant and each Defendant's subsidiaries, affiliates, and all persons in active concert or participation with them as follows:

- A. A judgment in favor of Plaintiff that Aflac, Allscripts, VW, AT&T, Verizon, and Thomson Reuters have infringed the '402 Patent;
- B. A judgment in favor of Plaintiff that all Defendants have infringed the '502 Patent;
- C. A permanent injunction enjoining Aflac, Allscripts, VW, AT&T, Verizon, and Thomson Reuters and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '402 Patent;

D. A permanent injunction enjoining all Defendants and their officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing the infringement of, or contributing to the infringement of the '502 Patent;

E. A judgment and order requiring Aflac, Allscripts, VW, AT&T, Verizon, and Thomson Reuters to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '402 Patent as provided under 35 U.S.C. § 284;

F. A judgment and order requiring all Defendants to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '502 Patent as provided under 35 U.S.C. § 284;

G. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and

H. Any and all other relief to which Plaintiff is entitled to under law and any other further relief that this Court or a jury may deem just and proper.

JURY DEMAND

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: February 9, 2012

Respectfully submitted,

By: /s/ William E. Davis, III
William E. Davis, III,
Texas State Bar No. 24047416
THE DAVIS FIRM, PC
111 W. Tyler Street
Longview, Texas 75601
Telephone: (903) 230-9090

Facsimile: (903) 230-9661
bdavis@bdavisfirm.com

By: /s/ Gregory P. Love

Gregory P. Love
State Bar No. 24013060
Scott E. Stevens
State Bar No. 00792024
Darrell G. Dotson
State Bar No. 24002010
Todd Y. Brandt
State Bar No. 24027051
Jason A. Holt
State Bar No. 24041122
David P. Henry
State Bar No. 24027015
Matthew M. Hill
State Bar No. 24041101
STEVENS LOVE
P.O. Box 3427
Longview, Texas 75601
Telephone: (903) 753-6760
Facsimile: (903) 753-6761
greg@stevenslove.com
scott@stevenslove.com
darrell@stevenslove.com
todd@stevenslove.com
jason@stevenslove.com
david@stevenslove.com
matt@stevenslove.com

ATTORNEYS FOR DATATERN, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email and/or fax, on this the 9th day of February 2012.

/s/ Gregory P. Love
Gregory P. Love