

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

ACCUHIRE.COM CORP.,

Plaintiff,

Case No. 4:12-cv-693-DW

v.

CVS CAREMARK CORPORATION and
CVS PHARMACY, INC.

Defendants.

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which Accuhire.com Corp. (“Accuhire.com” or “Plaintiff”) makes the following allegations against CVS Caremark Corporation and CVS Pharmacy, Inc. (collectively “CVS”).

PARTIES

1. Plaintiff Accuhire.com is a Kansas Subchapter S corporation with its principal place of business at 15 Highland Oak Dr Ellington, CT 06029.
2. On information and belief, CVS Caremark Corporation is a Delaware corporation with its principal place of business at 1 CVS Drive, Woonsocket, Rhode Island 02895. On information and belief, CVS Caremark Corporation may be served at its principal place of business.
3. On information and belief, CVS Pharmacy, Inc. is a Rhode Island corporation with its principal place of business at 1 CVS Drive, Woonsocket, Rhode Island 02895. On information and belief, CVS Pharmacy, Inc. may be served at its principal place of business.

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 under 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). On information and belief, CVS has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

FACTUAL BACKGROUND

A. Accuhire.com's Historical and Current Contacts with this Forum.

6. Plaintiff Accuhire.com is in the business of helping companies streamline and standardize their recruitment, assessment, selection, and management of applicants' data for hiring new employees using Internet-based technology, using position specific questionnaires and competency-based solutions that help clients identify to what extent an applicant can do the job, have the motivation to do the job and will fit with the client's culture.

7. Accuhire.com's main computerized, internet-based technology solution was invented by the Chief Executive Officer of Accuhire.com, D. Joseph Stimac, and it comprises building position-specific questionnaires that target the important requirements of a given employment position.

8. Mr. Stimac invented and designed Accuhire.com's proprietary technology that is the subject of this litigation in the late 1990's and early 2000's in Lawrence, Kansas.

9. The attorney that filed the corporate formation documents for Accuhire.com was Mr. Patrick Trysla, then employed at Husch & Eppenberger in Kansas City, Missouri. Mr. Trysla later accepted employment at the investment firm George K. Baum & Company ("Baum"), also in Kansas City, Missouri. While employed there, Mr. Trysla enlisted

Accuhire.com to provide a presentation of its technology to the executives at Baum. On information and belief, Mr. Trysla currently resides in Kansas City, Missouri.

10. At the time Accuhire.com began commercializing its services, the hosting servers were operated by Hypervine Communications, which later became Internet Direct Communications, Inc., located in Overland Park, Kansas. Mr. Stimac's main contact person at Hypervine/Internet Direct, and the person responsible for providing Internet access to Accuhire.com's servers, was Mr. Peter Churchill. On information and belief, Mr. Churchill currently resides in the Kansas City, Kansas area.

11. At that time, Accuhire.com used a software programming company called Celeritas Technologies, LLC ("Celeritas"), located in Overland Park, Kansas, for programming and troubleshooting services. Mr. Stimac's main contact person at Celeritas was Mr. Brian Coatney and the programmer primarily responsible for installing, programming and troubleshooting Accuhire.com's system was Mr. Gary Helton. On information and belief, Messrs. Coatney and Helton still reside in the Kansas City, Kansas area. Accuhire.com also used the programming services of Cyteworks, Inc. ("Cyteworks"), located in Lee's Summit, Missouri on occasion.

12. Accuhire.com later began to use Arsalon Technologies LLC in Lenexa, Kansas to host its computerized applicant screening services, but continued using Celeritas for programming and troubleshooting services. Accuhire.com's primary contact persons at Arsalon most familiar with Accuhire.com's services and servers were Mr. Bryan Porter, Mr. Gary Hall and Mr. Brad Hajek.

13. In October of 2011, Accuhire.com began using Cyteworks for hosting, programming and troubleshooting services. The primary programmers at Cyteworks who do

work for Accuhire.com and are most familiar with Accuhire.com's services are Mr. Robb Washeck and Mr. Duane Blankenship, both of whom, on information and belief, currently reside in the Kansas City, Missouri area.

B. History of Communication Between Accuhire.com and Defendant CVS.

14. Mr. Stimac filed a patent application, U.S. Provisional Application No. 60/296,011 ("the '011 Application"), directed to his invention, on June 5, 2001. The cover letter filed with the '011 Application is attached as Exhibit A.

15. On November 1, 2001, Accuhire.com conspicuously marked its webpage with the designation "Patent Pending" immediately following its "AccuHire: Advanced Applicant Screening Tools" banner.

16. On June 4, 2002, Mr. Stimac filed U.S. Patent Application No. 10/162,446 ("the '446 Application"), which claimed priority to the earlier filed '011 Application. The '446 Application was published on April 17, 2003 as US 2003/0071852 A1, a copy of which is attached hereto as Exhibit B.

17. On March 27, 2003, shortly before the '446 Application was published, Plaintiff Accuhire.com contacted Defendant CVS through a sales agent.

18. On April 14, 2003, Deborah G. Ellinger, an Executive Vice President of CVS, notified CVS employees Mark G. Griffin and Steve A. Parillo by e-mail about Accuhire.com's technology. In her email, Ms. Ellinger stated:

I like [Accuhire.com's] web-based approach to qualifying candidates, since it places less importance on resumes and instead relies on position-specific questionnaires that the applicants fill out. Also, it puts the burden of the work on the candidate (and the computer) instead of on you. I could see it being very useful for the store management and pharmacy positions, as well as other field jobs.

A copy of Ms. Ellinger's e-mail is shown in the e-mail string attached as Exhibit C.

19. On April 17, 2003, Mr. Griffin responded by e-mail to Ms. Griffin, stating “Thanks Deborah! We’ll take a look.” A copy of Mr. Griffin’s e-mail is shown in the e-mail string attached as Exhibit C.

20. On information and belief, a few months after Accuhire.com first contacted CVS, CVS began using another platform to provide an internet-based method for screening a plurality of job applicants using position-specific questionnaires.

COUNT I
INFRINGEMENT OF U.S. PATENT NO. 7,778,938

21. On August 17, 2010, the ’446 Application issued as United States Patent No. 7,778,938 (“the ’938 patent”) entitled “System and Method for Screening of Job Applicants”. A true and correct copy of the ’938 Patent is attached hereto as Exhibit D.

22. Accuhire.com is the owner by assignment of the ’938 patent, including all rights to recover for past and future acts of infringement.

23. On information and belief, CVS has been and now is infringing the ’938 Patent in this judicial district, and elsewhere in the United States. Acts of infringement by CVS include, without limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, at least an Internet-based system and method for screening of job applicants. Such infringing systems include, for example, CVS’s “Careers Home” system hosted, at least as of the date of the filing of this Complaint, at https://wfa.kronostm.com/index.jsp?locale=en_US&APPLICATIONNAME=CVSNonReqExt (“Careers Home System”). A screenshot of the webpage at this site is attached hereto as Exhibit E. The infringing systems also include CVS’s “Opportunities” system hosted, at least as of the date of the filing of this Complaint, at

<http://www.candidatecare.com/srcsh/RTI.home?d=cvs.candidatecare.com&> (“Opportunities

System”). A screenshot of the webpage at this site is attached hereto as Exhibit F. CVS is thus liable for infringement of the '938 Patent under 35 U.S.C. § 271.

24. CVS infringes at least Claim 1 of the '938 Patent, by way of example only, and without limitation on Accuhire.com's assertion of infringement by CVS of other claims of the '938 Patent. Claim 1 of the '938 Patent reads as follows:

1. A method for screening a plurality of job applicants comprising: receiving input to a predetermined plurality of job related profile questions through at least one input device, which are locked to prevent alteration by the job applicant, wherein the plurality of job related profile questions include at least one job-related question regarding a preferred work style for a job applicant, that provides an indication of motivation for the job applicant to perform a particular job, and are targeted to a predetermined job opening from the plurality of job applicants; providing a numeral score associated with each predetermined response with at least one processor; and tabulating the total score for all predetermined responses so that each job applicant can be objectively compared to other job applicants based on the received input with the at least one processor for viewing on at least one electronic display.

On information and belief, CVS practices each and every step of at least Claim 1 of the '938 Patent.

25. CVS's Careers Home System and Opportunities System each constitute a “method for screening a plurality of job applicants,” as made clear by the start page of the Careers Home System website, as shown in the screenshot attached hereto as Exhibit E, as well as the start page of the Opportunities System for retail management, as shown in the screenshot attached hereto as Exhibit F.

26. CVS practices the first step, “receiving input to a predetermined plurality of job related profile questions through at least one input device, which are locked to prevent alteration by the job applicant,” whenever an applicant begins to fill out CVS's employment questionnaire online. A screenshot exemplifying a portion of CVS's “predetermined plurality of job related profile questions” is shown in Exhibit G, attached hereto, for the Careers Home System. A

screenshot exemplifying a portion of the same for the Opportunities System is shown in Exhibit H, attached hereto. An example of an “input device” from which CVS receives the “input” is the user’s computer used to complete the questionnaire. On information and belief, CVS’s questions and answers are “locked to prevent alteration by the job applicant” on both the Careers Home System and the Opportunities System.

27. With respect to the next element of Claim 1, “wherein the plurality of job related profile questions include at least one job-related question regarding a preferred work style for a job applicant, that provides an indication of motivation for the job applicant to perform a particular job,” many of CVS’s questions relate to “a preferred work style for a job applicant” the answers to which indicate “motivation for the job applicant to perform a particular job”. Indeed, a portion of CVS’s questionnaire is tailored to probe the job applicant’s motivation to perform the job, as shown by the screenshot shown in the attached Exhibit I for the Careers Home System and the screenshot shown in the attached Exhibit J for the Opportunities System.

28. With respect to the next element, i.e., that the questions are “are targeted to a predetermined job opening from the plurality of job applicants,” CVS’s system makes it clear that the questions take into account the particular job opening being applied for. For example, the question shown in the screenshot, in attached Exhibit K, from CVS’s Careers Home System questionnaire is directed specifically to the applied position by asking if the applicant is “able to perform the essential functions of the job for which you are applying with or without reasonable accommodation” as to the essential functions which were given on the job overview page before the application process began, as shown in the attached Exhibit L. Further, the questions shown in the screenshots, in attached Exhibit M, from CVS’s Opportunities System questionnaire are directed specifically to the applied position by asking “years of multi-unit management

experience (personally accountable for more than 1 unit at a time,” “how many employees do you currently, or did you most recently directly supervise” and “years of staffing experience-interviewing, hiring, training (any business type).”

29. On information and belief, the final element of Claim 1, “providing a numeral score associated with each predetermined response with at least one processor; and tabulating the total score for all predetermined responses so that each job applicant can be objectively compared to other job applicants based on the received input with the at least one processor for viewing on at least one electronic display” is also met by CVS’s Careers Home System and CVS’s Opportunities System. The Rating Scale format of the answers (i.e., multiple options which are decreasingly desirable to Defendant CVS) indicate that the answers are given a “numerical score.” Because these are computer-driven systems, the score is necessarily provided by a “processor.” The use of an indirect Rating Scale also shows that a total score is tabulated “so that each job applicant can be objectively compared to other job applicants based on the received input” using the at least one processor. Finally, the internet-based nature of CVS’s Careers Home System demonstrates that the scores are viewed by CVS on an “electronic display.”

30. As shown above, portions of CVS’s questionnaires, such as questions on “How often are you willing to work holidays such as New Year’s Day, July 4th, Thanksgiving, etc.” (Careers Home System) and “Are you willing to perform these types of physical activities with or without a reasonable accommodation” (Opportunities System), demonstrate that the questions (1) are related to “a preferred work style for a job applicant”, (2) provide “an indication of motivation for the job applicant to perform a particular job” and (3) are “targeted to a predetermined job opening.” The Rating Scale format of the questions in those sections also

shows that the system (1) provides “a numeral score associated with each predetermined response with at least one processor”, and (2) tabulates “the total score for all predetermined responses so that each job applicant can be objectively compared to other job applicants based on the received input with the at least one processor.” As stated above, the internet-based nature of CVS’s Careers Home System and Opportunities System demonstrate that the scores are viewed by CVS on an “electronic display.”

31. In addition, CVS’s use of the Careers Home System and Opportunities System also meets all of the method steps of at least method Claims 12 and 13 and all of the elements of at least system Claims 23, 33, 34 and 44, without limitation, and therefore infringes at least those claims as well.

32. Accuhire.com is entitled to the issuance of permanent injunction enjoining CVS from continuing its infringement. Accuhire.com has suffered irreparable harm as CVS’s infringement has diluted the value of Accuhire.com’s patent rights, and has taken business away from Accuhire.com, resulting in lost profits, and a loss of market share and good will, in amounts that cannot be compensated by payment of money. Moreover, allowing CVS to continue in its infringement would encourage other would-be infringers to attempt to gain access, resulting in significant litigation expenses and uncertainty about the value of Accuhire.com’s patent, which is the foundation of Accuhire.com’s business. In addition, a remedy in equity is warranted because, considering the balance of hardship as between CVS and Accuhire.com, CVS would suffer far less hardship from the issuance of an injunction than Accuhire.com would suffer if an injunction is not issued. Finally, the public interest would not be disserved by the issuance of a permanent injunction, as the public does not have any substantial interest in the means by which CVS selects its employee candidates.

33. On information and belief, at least due to (1) Accuhire.com's disclosure to CVS in 2003 of its technology and its website, (2) the prominent disclosure on Accuhire.com's website that its technology was subject to "Patent Pending;" (3) the April 14, 2003 email from Ms. Ellinger to other CVS employees disclosing and praising Accuhire.com's technology; (4) Mr. Griffin's April 17, 2003 response email to Ms. Griffin stating that he would "take a look;" (5) the publication of Accuhire.com's pending patent application on April 17, 2003; and (6) the issuance of the '938 Patent on August 17, 2010, CVS knew that Accuhire.com's technology was proprietary, and subject to a pending patent application, which issued as the '938 Patent. Yet CVS launched its systems without regard to Accuhire.com's rights and without offering to compensate Accuhire.com for the use of its proprietary technology.

34. There is an objectively high likelihood that CVS's actions constituted infringement of a valid patent, and the likelihood was either known or so obvious that it should have been known by CVS. Thus, given Defendant's knowledge of the '938 Patent, stemming at least from its knowledge, at least as of 2003, about Accuhire.com, its technology, and its pending patent application, among other things, Defendant is engaging in willful infringement of the '938 Patent, and is also liable for enhanced damages under 35 U.S.C. § 284.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:

1. In favor of Plaintiff that Defendants have infringed the '938 Patent;
2. Enjoining CVS from making, importing, using, selling or offering to sell any method or system covered under one or more claims of the '938 Patent;

3. Requiring Defendants to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '938 Patent as provided under 35 U.S.C. § 284;

3. 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

4. Granting Accuhire.com any and all other relief to which Plaintiff may show itself to be entitled.

DEMAND FOR JURY TRIAL

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

August 23, 2012

WAGSTAFF & CARTMELL, LLP

OF COUNSEL:

Scott E. Stevens
Gregory P. Love
Darrell G. Dotson
Todd Y. Brandt
Stevens Love
222 N. Fredonia St.
Longview, Texas 75601
(903) 753-6760
scott@stevenslove.com
greg@stevenslove.com
darrell@stevenslove.com
todd@stevenslove.com

/s/ Eric D. Barton

Thomas P. Cartmell KS Bar No. 17020
Eric D. Barton KS Bar No. 16503
Wagstaff & Cartmell, LLP
4740 Grand Avenue
Suite 300
Kansas City, MO 64112
Tel: (816) 701-1100
Fax: (816) 531-2372
tcartmell@wcllp.com
ebarton@wcllp.com

Counsel for Plaintiff Accuhire.com, Corp.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2012, I electronically filed the foregoing document on the CM/ECF system, which will send a notice of electronic filing to all counsel of record in this matter who consent to receive electronic filings through the CM/ECF system.

/s/ Eric D. Barton

Eric D. Barton (KS #16503)

WAGSTAFF & CARTMELL LLP

4740 Grand Avenue, Ste. 300

Kansas City, Missouri 64112

Telephone: (816) 701-1100

Facsimile: (816) 531-2372

Email: ebarton@wcllp.com