IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MACROSOLVE, INC.,
 	
    Plaintiff,
 	
  v.
 	
WAL-MART STORES, INC.,
 	
    Defendant.
	CIVIL ACTION 6:12-cv-47-LED-JDL
	
	AMENDED COMPLAINT FOR PATENT INFRINGEMENT
	
	JURY TRIAL DEMANDED

Plaintiff MacroSolve, Inc. ("MacroSolve") files this amended complaint against the above-named defendant, alleging, based on its own knowledge with respect to itself and its own actions and based on information and belief as to all other matters, as follows:

PARTIES

1.   MacroSolve is a corporation formed under the laws of the State of Oklahoma, with a principal place of business in Tulsa, Oklahoma.

2.   Defendant Wal-Mart Stores, Inc. ("Walmart") is a corporation organized under the laws of Delaware, with a principal place of business at 702 SW 8th Street Bentonville, Arkansas 72716-8611. Walmart can be served with process by serving its registered agent: CT Corporation System; 350 N. St. Paul St., Ste. 2900, Dallas, TX 75201-4234.

JURISDICTION AND VENUE

3.   This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271, 281, and 284–85, among others. This Court has subject matter jurisdiction of the action under 28 U.S.C. §1331 and §1338(a).

4.   Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

Upon information and belief, the defendant has transacted business in this district, and has

committed and/or induced acts of patent infringement in this district.

5.   The defendant 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 the

defendant's 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 district.

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COUNT I

INFRINGEMENT OF U.S. PATENT NO. 7,822,816

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6.   On October 26, 2010, United States Patent No. 7,822,816 ("the 816 patent")

was duly and legally issued by the United States Patent and Trademark Office for an

invention entitled "System and Method for Data Management." A true and correct copy of

the 816 patent is attached hereto as Exhibit A.

7.   MacroSolve is the owner of the 816 patent with all substantive rights in and

to that patent, including the sole and exclusive right to prosecute this action and enforce

the 816 patent against infringers, and to collect damages for all relevant times.

8.   Walmart, directly or through intermediaries, made, had made, used,

imported, provided, supplied, distributed, sold, and/or offered for sale products and/or

systems (including at least the Walmart mobile application product and/or service) that

infringed one or more claims of the 816 patent, and/or Walmart induced infringement

and/or contributed to the infringement of one or more of the claims of the 816 patent by its

customers.

Additional Allegations Regarding Infringement

9.   Walmart has directly infringed the patent-in-suit by using its own mobile

applications.

10.   Additionally, Walmart has directly infringed the patent-in-suit by its joint

infringement of the claims with its customers. Walmart is vicariously liable for its

customers use of the accused mobile application at least because (1) Walmart was the

entity who was responsible for the design of its mobile application (including having the

application designed by its agent), whereas Walmart's customers have no involvement in

the design of the mobile application; and (2) Walmart encourages its customers to use its

mobile application. Additionally, Walmart and its customers have acted in concert to

perform the steps of the claimed method.

11.   Walmart both induced and contributed to underlying direct infringement of

the 816 Patent. The direct infringement underlying the indirect infringement claims

consists of its customers' use of the Walmart mobile application, which performs each step

of the claimed method (including by putting into operation and causing the Walmart

servers to perform certain actions such as step (a), (b), and (d) of claim 1 of the patent-in-

suit in response to commands sent from the mobile device). The direct infringement

underlying the indirect infringement claims is also met by the actions of Walmart and its

customers acting in concert, in which Walmart performs certain steps of the claimed

methods (for example, steps (a), (b), and (d) of claim 1, and Walmart's customers

performing the remainder of the steps). The direct infringement underlying the indirect

infringement claims is also met by the joint infringement of Walmart and its customers, as described above.

12.   Walmart induces its customers to use the Walmart mobile application. Walmart's distribution and promotion of the Walmart mobile application has no other purpose but to cause its customers to download and use it. Walmart encourages customers to download and use its mobile application. For example, Walmart does so on its website, instructing its customers to "Download the Mobile App for your smartphone or mobile device" and providing "3 ways to download." Walmart encourages its customers to download its mobile app "to start saving time and money today."

13.   Walmart has also contributed to the infringement of the 816 Patent by its customers by doing the following: (1) making the mobile application available for download; and (2) operating servers that can communicate with the mobile application, and that can be put into use and operation by the customers through the use of the mobile application.

14.   Walmart's mobile application has features that have no substantial use other than the uses that are alleged to infringe the 816 Patent. The ways in which this infringement occurs are spelled out in MacroSolve's infringement contentions, which have already been served, and which are hereby incorporated by reference. Specifically, the features of the Walmart mobile application that allow information to be collected from the user on the mobile device and then uploaded to the Walmart servers have no substantial use other than infringing the patent-in-suit. The use of these features of the Walmart mobile application for their intended purpose necessarily results in infringement of the 816 Patent.

15.   Walmart has had knowledge of the 816 Patent, as well as the fact that its customers use of its mobile application infringes the 816 patent, since at least as early as February 3, 2012, when it was served with the complaint in this action. Additionally, when it launched its mobile application, Walmart took inadequate steps to determine whether it would be infringing the intellectual property rights of others such as MacroSolve, and was thus willfully blind to the existence of the 816 Patent. Walmart thus induced its customers to use its mobile application, and contributed to their infringement, with specific intent that they would infringe the 816 Patent.

JURY DEMAND

MacroSolve hereby requests a trial by jury on all issues so triable by right.

PRAYER FOR RELIEF

MacroSolve requests that the Court find in its favor and against the defendant, and that the Court grant MacroSolve the following relief:

a.   Judgment that one or more claims of the 816 patent have been infringed, either literally and/or under the doctrine of equivalents, by the defendant and/or by others to whose infringement the defendant has contributed and/or by others whose infringement has been induced by the defendant;

b.   A permanent injunction enjoining the defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in active concert therewith from infringement, inducing infringement of, or contributing to infringement of the 816 patent;

c.   Judgment that the defendant account for and pay to MacroSolve all damages to and costs incurred by MacroSolve because of the defendant's infringing

activities and other conduct complained of herein;

        d.   That MacroSolve be granted pre-judgment and post-judgment interest on the damages caused by the defendant's infringing activities and other conduct complained of herein;

        e.   That this Court declare this an exceptional case and award MacroSolve its reasonable attorney's fees and costs in accordance with 35 U.S.C. § 285; and

        f.   That MacroSolve be granted such other and further relief as the Court may deem just and proper under the circumstances.

Dated: September 10, 2012   Respectfully submitted,

                                      /s/ Matthew J. Antonelli
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                              Attorneys for MacroSolve, Inc.

CERTIFICATE OF SERVICE

       I hereby certify that on the 10th day of September 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

                     /s/ Matthew J. Antonelli
                     Matthew Antonelli