

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

<p>MACROSOLVE, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>TARGET CORPORATION,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">CIVIL ACTION NO. 6:12-cv-418</p> <p style="text-align: center;"><b><u>AMENDED COMPLAINT</u></b></p> <p style="text-align: center;"><b><u>JURY TRIAL DEMANDED</u></b></p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

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 Target Corporation (“Target”) is a corporation organized under the laws of Minnesota, with a principal place of business at 1000 Nicollet Mall, Minneapolis, MN 55403. Target 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, by itself or in concert with others, 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)

**COUNT I**

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

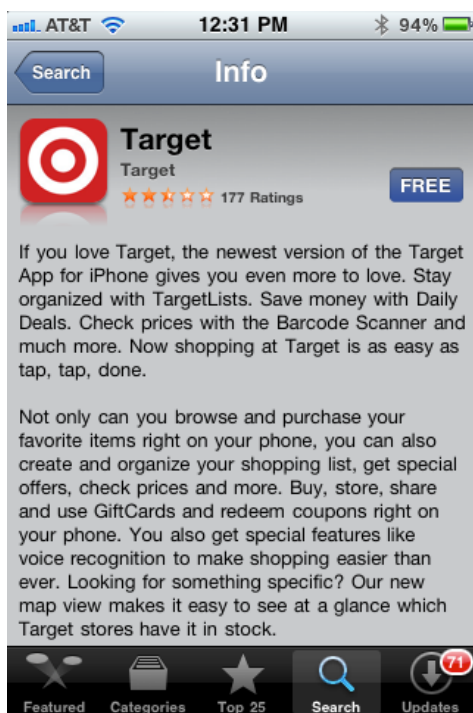
6. On October 26, 2010, United States Patent No. 7,822,816 (“the ’816 patent”) was duly and legally issued by the United States Patent and Trademark Office for an invention entitled “System and Method for Data Management.” A true and correct copy of the ’816 patent is attached hereto as Exhibit A.

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.

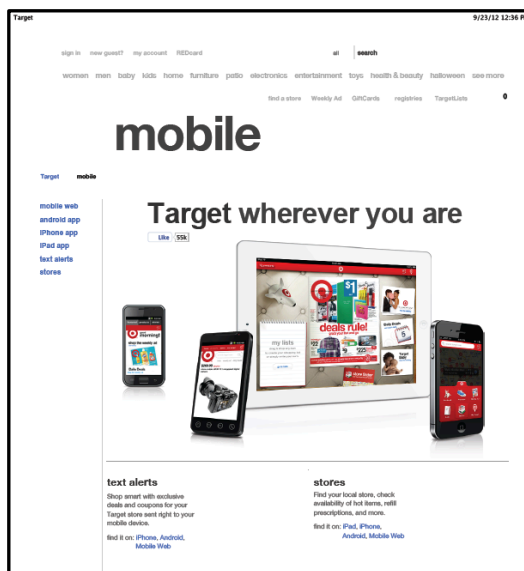
8. Target, directly or through its customers and/or intermediaries, made, had made, used, imported, provided, supplied, distributed, sold, and/or offered for sale products and/or systems (including at least the Target mobile app product and/or service) that infringed one or more claims of the ’816 patent.

**ADDITIONAL ALLEGATIONS IN RESPONSE TO TARGET’S MOTION TO DISMISS**

9. In its motion to dismiss, Target argued that the original complaint only generically identifies “the Target mobile app product and/or service.” Based on publically available information, there appears to only be a single Target mobile application (with various versions for different platforms, such as iOS for iPhone or iPad, or Android, and various versions reflecting updates provided by Target). Here is a screenshot of the Target mobile application currently available on the Apple app store:



Additionally, here is a screenshot of Target's webpage showing Target's promotion of these particular mobile applications:



This mobile application (including all versions) as well as the various servers that are used in conjunction with them comprise the products that are the basis for the infringement allegations in this case. Target may well have other mobile applications that are reasonably similar and that infringe MacroSolve's patent and to the extent it does, MacroSolve also accuses them of infringement and reserves all of its rights to seek discovery into such products.

10. In its motion to dismiss, Target also complains that MacroSolve's indirect

Case 6:12-cv-00418-LED Document 16 Filed 09/24/12 Page 4 of 7 PageID #: 57  
infringement allegations are not sufficient. Accordingly, MacroSolve provides additional details below regarding both the direct infringement underlying its indirect infringement claims, as well as the basis for its indirect infringement allegations.

11. Target infringes directly both (1) through its own use of its mobile applications and (2) through the joint use of its mobile applications by it and its customers. Regarding point (2), MacroSolve alleges that Target and its customers are joint infringers, because (a) Target is vicariously liable for its customers use of its mobile application because Target was the entity who was responsible for the design of its mobile application (including by having its agents design the mobile application) and Target encourages its customers to use its mobile application; and alternatively because (b) Target and its customers have acted in concert to use the Target mobile application in a way that performs the steps of the claimed method. Direct infringement also occurs when Target performs certain steps of the claimed methods and its customers perform others (for example when steps (a), (b), and (d) of claim 1 are performed by Target and Target's customers perform the remainder of the steps).

12. Target's customers also commit acts of direct infringement when they download and use Target's mobile application. They do so because their use of the mobile application performs each step of the claimed methods (including by putting into operation and causing the Target servers to perform certain actions such as steps (a), (b) and (d) of claim 1 of the patent-in-suit in response to commands sent from the mobile application).

12. Target has both induced and contributed to the underlying direct infringement of the 816 Patent by Target's customers, or by the joint action of Target and its customers. The direct infringement underlying the indirect infringement claims consist of the direct infringement by its customers, or by Target and its customers, as described above.

13. Target induces its customers to use the Target mobile application. Target's distribution and promotion of the Target mobile application has no other purpose but to cause its customers to download and use it. Target encourages its customers to download and use its mobile application, including, for example, on its website.

14. Target has contributed to the infringement of the 816 Patent by making its mobile application available for download and by operating servers (or having its agents operate servers) that can communicate with the mobile application, and that can be put into use and operation by Target's customers through the use of the mobile application.

15. Targets' mobile application has features that have no substantial uses other than the uses that are alleged to infringe the 816 Patent. Specifically, the features of the Target mobile application that allow information to be collected from the user of the mobile device and then uploaded to the Target servers have no substantial use other than infringing the patent-in-suit. The use of these features of Target's mobile application for their intended purpose necessarily results in infringement of the 816 Patent.

16. Target has 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 receiving notice of this lawsuit, when it was served with the complaint in this action. Additionally, when it launched its mobile application, Target took inadequate steps to determine whether it would be infringing the intellectual property rights of other such as MacroSolve and thus was willfully blind to the existence of the 816 Patent. Target thus induced and contributed to acts of direct infringement with the 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 all others acting in concert therewith;
- b. A permanent injunction enjoining the defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all others acting in concert therewith from 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 24, 2012

Respectfully submitted,

/s/ Matthew J. Antonelli

Matthew J. Antonelli (lead attorney)

Texas Bar No. 24068432

[matt@ahtlawfirm.com](mailto:matt@ahtlawfirm.com)

Zachariah S. Harrington

Texas Bar No. 24057886

[zac@ahtlawfirm.com](mailto:zac@ahtlawfirm.com)

Larry D. Thompson, Jr.

Texas Bar No. 24051428

[larry@ahtlawfirm.com](mailto:larry@ahtlawfirm.com)

ANTONELLI, HARRINGTON & THOMPSON LLP

4200 Montrose Blvd., Ste. 430

Houston, TX 77006

(713) 581-3000

(713) 581-3020 (fax)

*Attorneys for MacroSolve, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 24th 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