

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

**CASE NO. 12-80591-CIV-MIDDLEBROOKS/BRANNON**

SELECT RETRIEVAL, LLC,

Plaintiff,

vs.

VITACOST.COM, INC.,

Defendant.

**JURY TRIAL REQUESTED**

**FIRST AMENDED COMPLAINT**

Plaintiff Select Retrieval, LLC (“Select Retrieval” or “Plaintiff”), by way of its First Amended Complaint against Defendant Vitacost.com, Inc. (“Vitacost” or “Defendant”), hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, *et seq.*

**THE PARTIES**

2. Plaintiff Select Retrieval is a limited liability company organized under the laws of Texas with its principal place of business at 8416 Old McGregor Road, Waco, Texas 76712.

3. Defendant Vitacost is a corporation organized under the laws of Delaware with its principal place of business at 5400 Broken Sound Blvd., Suite 500, Boca Raton, Florida 33487, and a registered agent for service of process at Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

**JURISDICTION AND VENUE**

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a). Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b).

5. This Court has personal jurisdiction over Defendant for at least the following reasons: (i) Vitacost maintains its principal place of business in this District; (ii) Vitacost has committed acts of patent infringement in this District and elsewhere in the United States; and (iii) Vitacost regularly does business or solicits business, engages in other persistent courses of conduct, and/or derives substantial revenue from products and/or services provided to individuals in this District and in this State.

**COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,128,617**

6. Select Retrieval repeats and re-alleges the allegations of paragraphs 1 through 5 as if fully set forth herein.

7. On October 3, 2000, United States Patent No. 6,128,617 (hereinafter referred to as the “‘617 Patent”), entitled DATA DISPLAY SOFTWARE WITH ACTIONS AND LINKS INTEGRATED WITH INFORMATION, was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘617 Patent is attached as Exhibit A to this Complaint.

8. Select Retrieval is the assignee and owner of all right, title, and interest in and to the ‘617 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

9. Defendant Vitacost is and has been directly and indirectly infringing one or more claims of the '617 Patent in this judicial district and elsewhere in the United States at least by making and/or using one or more websites, including but not limited to, [www.vitacost.com](http://www.vitacost.com), operated using a method and a computer readable medium that embody the inventions claimed in the '617 Patent. The '617 Patent covers a method and/or system that enable search functions and data retrieval, including website features such as category and feature based product searches. Such data retrieval is achieved by increasingly refined searches that retrieve progressively detailed information about the products that Vitacost sells on its website. Vitacost's website provides the progressively refined search functionality utilizing infringing methods and/or systems so that its users and/or customers have the ability to select from a series of categories, options, and/or other product features such as, but not limited to, product and/or information type, price, color, brand, and size. Such acts constitute infringement under at least 35 U.S.C. § 271(a).

10. On November 2, 2011, Select Retrieval filed its Second Amended Complaint in an action styled: *Select Retrieval, LLC v. Aqua Superstore, Inc., et al.*, Case No. 6:11-cv-1348-ORL-35GJK, pending in the United States District Court for the Middle District of Florida ("the Original Action"). In the Original Action, Select Retrieval asserted claims against Vitacost for infringement of the '617 Patent related to Vitacost's use of a method and/or a computer readable medium that embody the inventions claimed in the '617 Patent. Vitacost has had actual knowledge of the '617 Patent since at least November 11, 2011, when Vitacost was served with the Second Amended Complaint in the Original Action.

11. Upon information and belief, since at least November 11, 2011, Vitacost has committed and continues to commit acts of contributory infringement of the '617 Patent under

35 U.S.C. § 271(c) in that Vitacost has made and/or used, or continues to make and/or use a method and/or a computer readable medium, including on its website www.vitacost.com, which have no substantial non-infringing uses, and provides such method and/or computer readable medium to its customers and users of its website(s), whose use of such method and/or computer readable medium constitutes direct infringement of the ‘617 Patent.

12. Upon information and belief, since at least November 11, 2011, Vitacost has induced and continues to induce others to infringe the ‘617 Patent under 35 U.S.C. § 271(b) by, among other things, actively and knowingly aiding and abetting others to infringe, including but not limited to customers and users of its website(s), such as www.vitacost.com, whose use of such method and/or computer readable medium constitutes direct infringement of the ‘617 Patent.

13. Upon information and belief, Vitacost’s infringement of the ‘617 Patent since at least November 11, 2011, has been and continues to be willful and deliberate

14. Because of Vitacost’s infringement, inducement of infringement, contributory infringement, and willful infringement of the ‘617 Patent, Select Retrieval has suffered damages and will continue to suffer damages in the future.

#### **JURY DEMAND**

15. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Select Retrieval demands a trial by jury on all issues triable as such.

#### **PRAYER FOR RELIEF**

WHEREFORE, Select Retrieval respectfully demands judgment for itself and against Defendant as follows:

A. An adjudication that Defendant has infringed the ‘617 Patent;

B. An award of damages to be paid by Defendant adequate to compensate Select Retrieval for its past infringement of the '617 Patent and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and enhanced damages for any willful infringement as justified under 35 U.S.C. § 284 and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

D. An award to Select Retrieval of such further relief at law or in equity as the Court deems just and proper.

Respectfully submitted,

Dated: October 1, 2012

By: /s/ Jeffrey D Feldman  
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*Attorneys for Plaintiff, Select Retrieval, LLC*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 1, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro-se parties identified in the attached Service List, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jeffrey D. Feldman

Jeffrey D. Feldman

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