

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

MACROSOLVE, INC.,

Plaintiff,

v.

CUMULUS MEDIA, INC.,

Defendant.

CIVIL ACTION NO. 6:12-CV-389

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 Cumulus Media, Inc. (“Cumulus”) is a corporation organized under the laws of Illinois. Cumulus is doing business in the state of Texas but has failed to appoint an agent for service of process in Texas. Accordingly, Cumulus can be served under the Texas Long Arm Statute and/or the Texas Business Organizations Code by serving the Secretary of State. Cumulus’ home, home office, and principal office address is 3280 Peachtree Road NW, Suite 2300, Atlanta, GA 30305.

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 defendants have transacted business in this district, and have committed, by themselves or in concert with others, acts of patent infringement in this district.

5. The defendants are 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 their 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.

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. Cumulus, directly or through 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 SweetJack mobile app product and/or service) that infringed one or more claims of the '816 patent.

ADDITIONAL ALLEGATIONS REGARDING INFRINGEMENT

9. Cumulus has and is directly infringing the 816 Patent.

10. Cumulus has and is indirectly infringing the 816 Patent, both as an inducer of infringer and as a contributory infringer.

11. Cumulus 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 Cumulus and its customers are joint infringers, because (a) Cumulus is vicariously liable for its customers use of its mobile application because Cumulus was the entity who was responsible for the design of its mobile application (including by having its agents design the mobile application) and Cumulus encourages its customers to use its mobile application; and alternatively because (b) Cumulus and its customers have acted in concert to use the Cumulus mobile application in a way that performs the steps of the claimed method. Direct infringement also occurs when Cumulus 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 Cumulus and Cumulus's customers perform the remainder of the steps).

12. Cumulus's customers also commit acts of direct infringement when they download and use the Cumulus 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 Cumulus 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).

13. Cumulus has both induced and contributed to the underlying direct

infringement of the 816 Patent by Cumulus's customers, or by the joint action of Cumulus and its customers. The direct infringement underlying the indirect infringement claims consist of the direct infringement by its customers, or by Cumulus and its customers, as described above.

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

15. Cumulus 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 Cumulus's customers through the use of the mobile application.

16. Cumulus's 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 Cumulus mobile application that allow information to be collected from the user of the mobile device and then uploaded to the Cumulus servers have no substantial use other than infringing the patent-in-suit. The use of these features of Cumulus's mobile application for their intended purpose necessarily results in infringement of the 816 Patent.

17. Cumulus 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, Cumulus 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. Cumulus 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: October 3, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October 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/ Califf T. Cooper
Califf T. Cooper