

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

MACROSOLVE, INC.,

Plaintiff,

v.

FAREPORTAL, INC. dba CHEAPOAIR,

Defendant.

CIVIL ACTION NO. 6:12-CV-416

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 Fareportal, Inc. (“CheapOAir”) is a corporation organized under the laws of New York. CheapOAir is doing business in the state of Texas but has failed to appoint an agent for service of process in Texas. Accordingly, CheapOAir can be served under the Texas Long Arm Statute and/or the Texas Business Organizations Code by serving the Secretary of State. CheapOAir’s home, home office, and principal office address is 213 West 35th Street, Ste. 1301, New York, NY 10001.

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

ADDITIONAL ALLEGATIONS REGARDING INFRINGEMENT

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

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

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

12. CheapOAir's customers also commit acts of direct infringement when they download and use the CheapOAir 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 CheapOAir 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. CheapOAir has both induced and contributed to the underlying direct infringement of the 816 Patent by CheapOAir's customers, or by the joint action of CheapOAir and its customers. The direct infringement underlying the indirect infringement claims consist of the direct infringement by its customers, or by CheapOAir and its customers, as described above.

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

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

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

17. CheapOAir 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, CheapOAir 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. CheapOAir 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 26, 2012

Respectfully submitted,

/s/ Matthew J. Antonelli
Matthew J. Antonelli (lead attorney)
Texas Bar No. 24068432
matt@ahtlawfirm.com
Zachariah S. Harrington
Texas Bar No. 24057886
zac@ahtlawfirm.com
Larry D. Thompson, Jr.
Texas Bar No. 24051428
larry@ahtlawfirm.com
ANTONELLI, HARRINGTON &
THOMPSON LLP
4200 Montrose Blvd., Ste. 430
Houston, TX 77006
(713) 581-3000

Attorneys for MacroSolve, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 26th 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