

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

INNOVATIVE AUTOMATION LLC,
Plaintiff,

v.

AMAZON.COM, INC.;
AUDIBLE, INC.; and
ON-DEMAND PUBLISHING LLC d/b/a
CREATESPACE,

Defendants.

Case No. 6:12-cv-881

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Innovative Automation LLC states its Complaint against defendants Amazon.com, Inc., Audible, Inc., and On-Demand Publishing LLC, and alleges as follows:

THE PARTIES

1. Plaintiff Innovative Automation LLC is a limited liability company organized and existing under the laws of the State of California, with its principal place of business at 606 North First Street, San Jose, California 95112.

2. Upon information and belief, defendant Amazon.com, Inc. is a corporation organized and existing under the laws of Delaware, with its principal place of business at 426 Terry Avenue North, Seattle, Washington 98109.

3. Upon information and belief, defendant Audible, Inc. is a corporation organized and existing under the laws of Delaware, with its principal place of business at 1 Washington Park, Newark, New Jersey 07102.

4. Upon information and belief, defendant On-Demand Publishing LLC d/b/a CreateSpace is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 7290 Investment Drive, North Charleston, South Carolina 29418.

5. On information and belief, each of the defendants has acted, and continues to act, as the agent of the other defendants, through and in concert with each other.

JURISDICTION AND VENUE

6. Plaintiff realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

7. This action is for patent infringement pursuant to the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.* This Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. Personal jurisdiction exists generally over each defendant because it has sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within the Eastern District of Texas. Personal jurisdiction also exists specifically over each defendant because it, directly or through subsidiaries or intermediaries, makes, uses, offers for sale, sells, imports, advertises, makes available and/or markets one or more products and/or services within the State of Texas, and more particularly, within the Eastern District of Texas, that infringe the patent-in-suit, as described more particularly below.

9. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b), because each defendant has committed acts of infringement in the Eastern District of Texas and has transacted business in the Eastern District of Texas.

COUNT ONE
INFRINGEMENT OF U.S. PATENT NO. 7,174,362

10. Plaintiff realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

11. Plaintiff is the owner of all right, title, and interest in United States Patent No. 7,174,362, entitled “Method and System for Supplying Products from Pre-Stored Digital Data in Response to Demands Transmitted via Computer Network,” duly and legally issued by the United States Patent and Trademark Office on February 6, 2007 (the “‘362 patent”). A true and correct copy of the ‘362 patent is attached hereto as Exhibit A.

12. Defendant Amazon.com, Inc. has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the ‘362 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, Amazon.com, Inc. has infringed and continues to infringe the ‘362 patent by making, using, offering to sell, selling, and/or importing into the United States the following products and services: (i) the Kindle content distribution product and service; (ii) the Audible audiobook product and service; (iii) the Cloud Player product and service; and (iv) the on-demand CD and DVD duplication product and service.

13. Defendant Audible, Inc. has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the ‘362 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, Audible, Inc. has infringed and continues to infringe the ‘362 patent by making, using, offering to sell, selling, and/or importing into the United States its Audible audiobook product and service.

14. Defendant On-Demand Publishing LLC has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '362 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, On-Demand Publishing LLC has infringed and continues to infringe the '362 patent by making, using, offering to sell, selling, and/or importing into the United States its on-demand CD and DVD duplication product and service.

15. As a result of Defendants' infringing activities with respect to the '362 patent, Plaintiff has suffered damages in an amount not yet ascertained. Plaintiff is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial, but in no event less than reasonable royalties, together with interest and costs. Defendants' infringement of Plaintiff's exclusive rights under the '362 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

16. Plaintiff reserves the right to allege, after discovery, that Defendants' infringement of the '362 patent is willful and deliberate, entitling Plaintiff to increased damages under 35 U.S.C. § 284, and to attorneys' fees incurred in prosecuting this action under 35 U.S.C. § 285.

COUNT TWO
INFRINGEMENT OF U.S. PATENT NO. 7,392,283

17. Plaintiff realleges and incorporates by reference the above paragraphs of this Complaint, inclusive, as though fully set forth herein.

18. Plaintiff is the owner of all right, title, and interest in United States Patent No. 7,392,283, entitled "Method and System for Supplying Products from Pre-Stored Digital Data in Response to Demands Transmitted Via Computer Network," duly and legally issued by the

United States Patent and Trademark Office on June 24, 2008 (the “‘283 patent”). A true and correct copy of the ‘283 patent is attached hereto as Exhibit B.

19. Defendant Amazon.com, Inc. has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the ‘283 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, Amazon.com, Inc. has infringed and continues to infringe the ‘283 patent by making, using, offering to sell, selling, and/or importing into the United States the following products and services: (i) the Kindle content distribution product and service; (ii) the Audible audiobook product and service; (iii) the Cloud Player product and service; and (iv) the on-demand CD and DVD duplication product and service.

20. Defendant Audible, Inc. has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the ‘283 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, Audible, Inc. has infringed and continues to infringe the ‘283 patent by making, using, offering to sell, selling, and/or importing into the United States its Audible audiobook product and service.

21. Defendant On-Demand Publishing LLC has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the ‘283 patent under 35 U.S.C. § 271 by making, using, offering to sell, selling, and/or importing into the United States the patented invention within the United States. Specifically, On-Demand Publishing LLC has infringed and continues to infringe the ‘283 patent by making, using, offering to sell, selling, and/or importing into the United States its on-demand CD and DVD duplication product and service.

22. As a result of Defendants' infringing activities with respect to the '283 patent, Plaintiff has suffered damages in an amount not yet ascertained. Plaintiff is entitled to recover damages adequate to compensate it for Defendants' infringing activities in an amount to be determined at trial, but in no event less than reasonable royalties, together with interest and costs. Defendants' infringement of Plaintiff's exclusive rights under the '283 patent will continue to damage Plaintiff, causing irreparable harm for which there is no adequate remedy at law, unless enjoined by this Court.

23. Plaintiff reserves the right to allege, after discovery, that Defendant's infringement of the '283 patent is willful and deliberate, entitling Plaintiff to increased damages under 35 U.S.C. § 284, and to attorneys' fees incurred in prosecuting this action under 35 U.S.C. § 285.

PRAYER FOR RELIEF

Plaintiff requests entry of judgment in its favor against each Defendant as follows:

a) For a declaration that each defendant has infringed one or more claims of the '362 patent and the '283 patent;

b) For an award of damages adequate to compensate Plaintiff for each defendant's infringement of the '362 patent and '283 patent, but in no event less than a reasonable royalty, together with prejudgment and post-judgment interest and costs, in an amount according to proof;

c) For an entry of a permanent injunction enjoining each defendant, and its respective officers, agents, employees, and those acting in privity with it, from further infringement of the '362 patent and '283 patent, or in the alternative, awarding a royalty for post-judgment infringement; and

d) For an award to Plaintiff of such other costs and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests a trial by jury.

Dated: November 16, 2012

Respectfully submitted,

/s/ Charles Ainsworth

Charles Ainsworth
State Bar No. 00783521
PARKER BUNT & AINSWORTH , P.C.
100 E. Ferguson, Suite 1114
Tyler, Texas 75702
Telephone: (903) 531-3535
Facsimile: (903) 533-9687
charley@pbatyler.com

Adam J. Gutride, Esq.
Seth A. Safier, Esq. – pending admission
Todd Kennedy, Esq. – pending admission
Anthony J. Patek, Esq.
GUTRIDE SAFIER, LLP
835 Douglass Street
San Francisco, California 94114
Telephone: (415) 789-6390
Facsimile: (415) 449-6469
adam@gutridesafier.com
seth@gutridesafier.com
todd@gutridesafier.com
anthony@gutridesafier.com

Victoria L.H. Boone
Peter Ajlouny
BOOKE & AJLOUNY LLP
606 North First Street
San Jose, California 95112
Telephone: (408) 286-7000
Facsimile: (408) 286-7111
vbooke@gmail.com
peter@bookelaw.com

Attorneys for Plaintiff
Innovative Automation LLC