

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MAINE

SURFCAST, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:12-cv-00333-DBH
	)	
MICROSOFT CORPORATION,	)	
	)	
Defendant.	)	
	)	

**FIRST AMENDED COMPLAINT**

Plaintiff SurfCast, Inc. (“SurfCast”) amends its Complaint against Defendant Microsoft Corporation (“Microsoft”), and hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action brought by SurfCast for infringement of U.S. Patent No. 6,724,403 (“the ’403 patent”), arising under the patent laws of the United States, Title 35, United States Code, 35 U.S.C. §§ 271 and 281.

**PARTIES**

2. SurfCast is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 22 Carroll Street, Suite 9, Portland, ME 04102.

3. On information and belief, Microsoft is a corporation organized and existing under the laws of the State of Washington, with its corporate headquarters at One Microsoft Way, Redmond, WA 98052.

**JURISDICTION AND VENUE**

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 100, *et seq.*, and this Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

6. SurfCast's office is located at 22 Carroll Street, Suite 9, Portland, ME 04102.

7. Ovid Santoro, one of the founders of SurfCast and one of the inventors of the '403 patent resides in Portland and Lincolnville, Maine.

8. Documents and tangible things concerning SurfCast, the patent-in-suit and inventor Ovid Santoro all reside in Maine.

9. This Court has personal jurisdiction over Microsoft with respect to this Complaint because, *inter alia*: (1) Microsoft has committed, or aided, abetted, contributed to or participated in the commission of tortious acts of patent infringement by offering to sell and selling the accused products. These acts have caused foreseeable harm and injury to SurfCast, a corporation with its principal place of business located in Maine; (2) Microsoft has had and has systematic and continuous contacts with Maine; and (3) Microsoft offers to sell, sells and has sold the accused products in Maine.

**FACTUAL BACKGROUND**

10. U.S. Patent No. 6,724,403 is entitled "System and Method For Simultaneous Display of Multiple Information Sources," which the U.S. Patent and Trademark Office duly and legally issued on April 20, 2004. A true and correct copy of the '403 patent is attached hereto as Exhibit A.

11. Ovid Santoro and Klaus Lagermann (collectively “the ’403 patent inventors”) are the inventors of the ’403 patent.

12. By virtue of inventor Ovid Santoro’s February 14, 2001 assignment and inventor Klaus Lagermann’s March 5, 2001 assignment, SurfCast obtained all rights, title and interest in the inventions of the ’403 patent.

13. The claims of the ’403 patent are valid and enforceable.

14. Microsoft infringes the ’403 patent by making, using, selling, and offering to sell devices and software products covered by the ’403 patent including operating systems for personal computers, phones, tablet devices, and other hardware, mobile devices with the Windows Phone 7 Operating System (“the Windows Phone 7 Products”), the Microsoft Surface with the Windows RT Operating System, the Microsoft Windows RT, Microsoft Windows 8, Microsoft Windows 8 Pro, and Microsoft Windows 8 Enterprise Operating System for personal computers, and personal computers implementing the Microsoft Windows 8, Windows 8 Pro, and Windows 8 Enterprise Operating System (“the Windows 8 Accused Products”), Microsoft Windows Phone 8 operating systems, and phones and mobile devices implementing the Microsoft Windows Phone 8 operating system, including the Windows Phone 8X by HTC, the Windows Phone 8X – 4G LTE by HTC, the Nokia Lumia 810 phone, the Nokia Lumia 820 phone, the Nokia Lumia 822 phone, and the Nokia Lumia 920 phone (“the Windows Phone 8 Accused Products”) and all like products, collectively “the Accused Products,” in Maine and throughout the United States.

15. The Accused Products employ a display with a user interface described by Microsoft as follows: “Through tiles on the Start screen, apps are alive with activity and can deliver vibrant content, even when they’re not running. Using live tiles, your app can provide

useful, at-a-glance data to the user, while minimizing battery usage. Windows Push Notification Services (WNS) enables your app to receive messages and send them to your app's live tile or provide a notification to the user." Windows 8 Product Guide at p. 54 (available at <http://go.microsoft.com/fwlink/?LinkId=251529>; attached hereto as Exhibit D).

16. On information and belief, on or about October 26, 2012, Microsoft began making, using, offering for sale and selling the Windows 8 Accused Products in Maine and throughout the United States.

17. On information and belief, on or about November 8, 2010, Microsoft began offering for sale and selling the Windows Phone 7 Products in Maine and throughout the United States.

18. On information and belief, on or about November 18, 2012, Microsoft began offering for sale and selling the Windows Phone 8 Accused Products in Maine and throughout the United States.

19. The Windows Phone 8 Accused Products employ a display with a user interface described by the Windows Phone website as follows: "The only phone with Live Tiles. These amazing little gems deliver automatic updates on what's happening in your world, right to your Start screen. Pin the ones you want, then move and resize them as you like" (available at <http://www.windowsphone.com/en-us>, attached hereto as Exhibit G.)

**COUNT I (DIRECT INFRINGEMENT OF THE '403 PATENT)**

20. Each of the preceding paragraphs 1 to 19 is incorporated as if fully set forth herein.

21. Microsoft's offer to sell and sale of the Accused Products constitutes infringement of one or more of the claims of the '403 patent under 35 U.S.C. § 271(a), including but not limited to claims 1 and 22.

22. SurfCast has been injured and continues to be injured by Microsoft's offer to sell and sale of the Accused Products.

**COUNT II (INDUCING INFRINGEMENT OF THE '403 PATENT)**

23. Each of the preceding paragraphs 1 to 22 is incorporated as if fully set forth herein.

24. Microsoft is the assignee of U.S. Patent No. 7,933,632, entitled "Tile Space User Interface for Mobile Devices," ("the '632 patent") the abstract of which describes "a user interface for mobile devices enable data and services available through the mobile device to be represented as a set of tiles maintained in a display space. The tiles provide a snapshot of the current state of content available through the mobile device without requiring any interaction by the user. The tiles and display space are customizable and can be dynamically updated to display content to a user. In addition, tiles can provide functionality, including simple tasks to a user without requiring the user to navigate away from the tile display space." During prosecution of the application that issued as the '632 patent, the Patent Examiner cited the '403 patent as relevant prior art as part of a Non-Final Rejection dated April 21, 2009. *See* Exhibit B, File History of U.S. Patent No. 7,933,632 at Notice of References Cited, p. 2 of 4 (Part of Paper No. 20090414); *see also* Exhibit C, '632 Patent at page 2. Accordingly, Microsoft had knowledge of the '403 patent at least as early as April 21, 2009.

25. Through the conduct alleged above, Microsoft actively and knowingly induced and will induce its customers and users of its Accused Products for whom Microsoft markets,

offers to sell, sells and distributes its operating systems, including the Windows Phone 7 Operating System, the Microsoft Surface, the Microsoft Windows RT, Microsoft Windows 8, Microsoft Windows 8 Pro, Microsoft Windows 8 Enterprise Operating Systems, and the Microsoft Windows Phone 8 operating systems to directly infringe one or more claims of the '403 patent, including but not limited to claims 1 and 22 of the '403 patent. For example, Microsoft instructs its customers to use the Accused Products and its “live tiles” to “deliver vibrant content,” including through the Windows Push Notification Services (WNS). *See, e.g.*, Exhibit D, Windows 8 Product Guide, p. 54. Microsoft also instructs its customers to connect built-in applications of the Accused Products, such as Photos, to services by adding them to the user’s Microsoft Account. *See, e.g.*, Exhibit D, Windows 8 Product Guide, pp. 20-21. Microsoft also provides a Windows Store which Microsoft describes can be used with the Accused Products as follows: “In the Windows Store, you can search for or browse thousands of apps, all grouped in easy-to-find categories. ... After you decide, you can buy with peace of mind because before an app makes it to the Windows Store, it’s screened and checked for viruses.” *See, e.g.*, Exhibit D, Windows 8 Product Guide, pp. 23-24. Microsoft instructs developers that “Live tiles on the Windows Start screen display information from your website or service and help ensure your app is useful—even when it’s not running.” *See, e.g.*, Exhibit D, Windows 8 Product Guide, p. 49.

26. Microsoft also instructs developers how to write applications that, when downloaded through the Windows Store and used on an Accused Product, directly infringe one or more claims of the '403 patent, including but not limited to claims 1 and 22 of the '403 patent. For example, Microsoft instructs that “app tiles ... are the Start screen tiles that represent and launch your app. An app tile is more than a big icon; it has the ability to display a continuously

changing set of content that can be used to keep the user aware of events associated with that app (such as new social networking posts, new news headlines, or stock quotes) when the app is not running. A tile notification can originate either from a local API call or from the cloud.” Exhibit E, “Tile and Tile Notification Overview (Windows Store Apps),” available at <http://msdn.microsoft.com/en-US/library/windows/apps/hh779724>. Microsoft further instructs that, in accordance with one or more claims of the ’403 patent, including but not limited to claim 1, “[t]here are 4 ways that an app can update its tile (see Choosing a notification delivery method in the Dev Center). Apps can use local notifications to update their tile, which is useful if info changes while the app is running. Apps can schedule tile and toast updates to happen at precise times. Also, apps can use push or polling tile notifications to update their tiles from the cloud while they are not running. Polling is great for low-frequency broadcast content. Push is great for sending toast notifications, which need to arrive immediately, or tile updates that are targeted to individual users.” Exhibit F, “Creating a Great Tile Experience (Part 2),” (Apr. 18, 2012) available at <http://blogs.msdn.com/b/windowsappdev/archive/2012/04/18/creating-a-great-tile-experience-part-2.aspx>.

27. Microsoft’s knowing and active inducement of users and customers to directly infringe the ’403 patent constitutes inducing infringement of one or more of the claims of the ’403 patent under 35 U.S.C. § 271(b), including but not limited to claims 1 and 22 of the ’403 patent.

28. SurfCast has been and continues to be injured and damaged by Microsoft’s knowing and active inducement of users and customers to directly infringe the ’403 patent.

**COUNT III (CONTRIBUTORY INFRINGEMENT OF THE '403 PATENT)**

29. Each of the preceding paragraphs 1 to 28 is incorporated as if fully set forth herein.

30. Microsoft is the assignee of U.S. Patent No. 7,933,632, entitled “Tile Space User Interface for Mobile Devices,” (“the ’632 patent”) the abstract of which describes “a user interface for mobile devices enable data and services available through the mobile device to be represented as a set of tiles maintained in a display space. The tiles provide a snapshot of the current state of content available through the mobile device without requiring any interaction by the user. The tiles and display space are customizable and can be dynamically updated to display content to a user. In addition, tiles can provide functionality, including simple tasks to a user without requiring the user to navigate away from the tile display space.” During prosecution of the application that issued as the ’632 patent the Patent Examiner cited the ’403 patent as relevant prior art as part of a Non-Final Rejection dated April 21, 2009. *See* Exhibit B, File History of U.S. Patent U.S. Patent No. 7,933,632 at Notice of References Cited, p. 2 of 4 (Part of Paper No. 20090414); *see also* Exhibit C, ’632 Patent at page 2. Accordingly, Microsoft had knowledge of the ’403 patent at least as early as April 21, 2009.

31. Through the sale, marketing and distribution of the Accused Products, Microsoft has contributed and continues to contribute to the infringement of one or more claims of the ’403 patent by users and customers for whom Microsoft markets, offers to sell, sells and distributes the Accused Products and will continue to do so, knowing the same to be especially made or especially adapted for use in an infringement of the ’403 patent.

32. Upon information and belief, none of the Accused Products is a staple article or commodity of commerce suitable for substantial noninfringing use.



33. Microsoft's contribution to the infringement of the '403 patent by users and customers constitutes contributory infringement of one or more of the claims of the '403 patent under 35 U.S.C. § 271(c), including but not limited to claims 1 and 22 of the '403 patent.

34. SurfCast has been and continues to be injured and damaged by Microsoft's contribution to the infringement of the '403 patent by users and customers.

**COUNT IV (WILLFUL INFRINGEMENT OF THE '403 PATENT)**

35. Each of the preceding paragraphs 1 to 32 is incorporated as if fully set forth herein.

36. Microsoft is the assignee of U.S. Patent No. 7,933,632, entitled "Tile Space User Interface for Mobile Devices," ("the '632 patent"), the abstract of which describes "a user interface for mobile devices enable data and services available through the mobile device to be represented as a set of tiles maintained in a display space. The tiles provide a snapshot of the current state of content available through the mobile device without requiring any interaction by the user. The tiles and display space are customizable and can be dynamically updated to display content to a user. In addition, tiles can provide functionality, including simple tasks to a user without requiring the user to navigate away from the tile display space." During prosecution of the application that issued as the '632 patent the Patent Examiner cited the '403 patent as relevant prior art as part of a Non-Final Rejection dated April 21, 2009. *See* Exhibit B, File History of U.S. Patent U.S. Patent No. 7,933,632 at Notice of References Cited, p. 2 of 4 (Part of Paper No. 20090414); *see also* Exhibit C, '632 Patent at page 2. Accordingly, Microsoft had knowledge of the '403 patent at least as early as April 21, 2009.

37. Microsoft's continued making, using, sales, and offerings to sell the Accused Products with knowledge of the '403 patent constitutes willful infringement of one or more of the claims of the '403 patent.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand trial by jury of all issues triable of right by a jury.

**PRAYER FOR RELIEF**

WHEREFORE, SurfCast prays that this Court grant the following relief:

- a) An order adjudging and decreeing that Defendant Microsoft has directly infringed the '403 patent;
- b) An order adjudging and decreeing that Defendant Microsoft has induced the direct infringement of the '403 patent;
- c) An order adjudging and decreeing that Defendant Microsoft has contributed to the direct infringement of the '403 patent;
- d) An order directing Microsoft to account for and pay to SurfCast all damages caused to SurfCast by reason of Microsoft's patent infringement, pursuant to 35 U.S.C. § 284, including increased damages under 35 U.S.C. § 284;
- e) An award of pre-judgment and post-judgment interest on the damages caused to SurfCast by Microsoft;
- f) A declaration that this case is exceptional and an award of attorneys' fees under 35 U.S.C. § 285 and costs and expenses in this action; and
- g) For all other relief the Court deems just and proper.

DATED at Portland, Maine this 28th day of November, 2012.

Respectfully submitted,  
SurfCast, Inc.

by its attorneys,  
PRETI FLAHERTY BELIVEAU &  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the above date, I electronically filed the within document in this matter with the Clerk of Court using the CM/ECF system which will send the notification of such filing to the following counsel of record:

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