

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

MACROSOLVE, INC.,

Plaintiff,

v.

- (1) SEARS HOLDINGS
MANAGEMENT CORPORATION,
- (2) SEARS HOLDINGS
CORPORATION,
- (3) SEARS, ROEBUCK AND CO.,
- (4) KMART CORPORATION, AND
- (5) KMART HOLDING
CORPORATION,

Defendants.

CIVIL ACTION NO. 6:12-CV-916

ORIGINAL COMPLAINT
FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff MacroSolve, Inc. (“MacroSolve”) files this original complaint against the above-named defendants, alleging, based on its own knowledge as 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 Sears Holdings Management Corporation (“Sears Holdings Mgmt.”) is a corporation organized under the laws of Delaware, with a principal place of business in Hoffman Estates, Illinois. Sears Holdings Mgmt. can be served with process by serving its registered agent: CT Corporation System; 350 N. St. Paul St., Ste. 2900, Dallas, TX 75201-4234.

3. Defendant Sears Holdings Corporation (“Sears Holdings”) is a corporation organized under the laws of Delaware. Sears Holdings is doing business in the state of Texas but has failed to appoint an agent for service of process in Texas. Accordingly, Sears Holdings can be served under the Texas Long Arm Statute and/or the Texas Business Organizations Code by serving the Secretary of State. Sears Holdings’s home, home office, and principal office address is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

4. Defendant Sears, Roebuck and Co. (“Sears Roebuck”) is a corporation organized under the laws of New York, with a principal place of business in Hoffman Estates, Illinois. Sears Roebuck can be served with process by serving its registered agent: CT Corporation System; 350 N. St. Paul St., Ste. 2900, Dallas, TX 75201-4234.

5. Defendant Kmart Corporation (“Kmart”) is a corporation organized under the laws of Michigan. Kmart is doing business in the state of Texas but has failed to appoint an agent for service of process in Texas. Accordingly, Kmart can be served under the Texas Long Arm Statute and/or the Texas Business Organizations Code by serving the Secretary of State. Kmart’s home, home office, and principal office address is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

6. Defendant Kmart Holding Corporation (“Kmart Holding”) is a corporation organized under the laws of Delaware. Kmart Holding is doing business in the state of Texas but has failed to appoint an agent for service of process in Texas. Accordingly, Kmart Holding can be served under the Texas Long Arm Statute and/or the Texas Business Organizations Code by serving the Secretary of State. Kmart Holding’s home,

home office, and principal office address is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

JURISDICTION AND VENUE

7. 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).

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400(b). Upon information and belief, defendants have transacted business in this district and have committed, by itself or in concert with others, acts of patent infringement in this district.

9. 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 the defendants’ 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

10. 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.

11. 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.

12. Sears Holdings Mgmt., Sears Holdings, Sears Roebuck, Kmart, and Kmart Holdings (collectively, "Sears"), directly or through their 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 Sears and Kmart mobile apps products and/or services (collectively, "Sears mobile apps")) that infringed one or more claims of the '816 patent.

13. Sears has and is directly infringing the '816 patent.

14. Sears has and is indirectly infringing the '816 patent, both as an inducer of infringement and as a contributory infringer.

15. Sears infringes directly both (1) through its own use of its mobile apps and (2) through the joint use of its mobile apps by it and its customers. Regarding point (2), MacroSolve alleges that Sears and its customers are joint infringers because (a) Sears is vicariously liable for its customers' use of its mobile apps because Sears was the entity responsible for the design of the apps (including by having its agents design the apps) and Sears encourages its customers to use its mobile apps; and alternatively because (b) Sears and its customers have acted in concert to use the Sears mobile apps in a way that performs the steps of the claimed method. Direct infringement also occurs when Sears performs certain steps of the claimed methods and its customers perform others (for example, when Sears performs claim 1's steps (a), (b), and (d) and Sears's customers perform the

remainder of the steps) where Sear's customers are under the direction or control of Sears and Sears is acting as a mastermind.

16. Sears's customers also commit acts of direct infringement when they download and use the Sears mobile apps. They do so because their use of the mobile apps performs each step of the claimed methods (including by putting into operation and causing the Sears 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 app).

17. Sears has both induced and contributed to the underlying direct infringement of the '816 patent by Sears's customers or by the joint action of Sears and its customers. The direct infringement underlying the indirect infringement claims consist of the direct infringement by its customers or by Sears and its customers, as described above.

18. Sears induces its customers to use the Sears mobile apps. Sears's distribution and promotion of the Sears mobile apps has no other purpose but to cause its customers to download and use it. Sears encourages its customers to download and use its mobile apps, including, for example, on its websites and on the app store listings for these apps.

19. Sears has contributed to the infringement of the '816 patent by making its mobile apps available for download and by operating servers (or having its agents operate servers) that can communicate with the mobile apps, and that can be put into use and operation by Sears's customers through the use of the mobile apps.

20. Sears's mobile apps have features that have no substantial uses other than the uses that are alleged to infringe the '816 patent. Specifically, the features of the Sears mobile apps that allow information to be collected from the user of the mobile device and

then uploaded to the Sears servers have no substantial use other than infringing the patent-in-suit. The use of these features of Sears's mobile apps for their intended purpose necessarily results in infringement of the '816 patent.

21. Sears has or will have knowledge of the '816 patent, as well as the fact that its customers use of its mobile apps infringes the '816 patent, since at least as early as the filing of this lawsuit. Additionally, when it launched its mobile apps, Sears took inadequate steps to determine whether it would be infringing the intellectual property rights of others, such as MacroSolve, and thus was willfully blind to the existence of the '816 patent. Sears thus induces /induced and contributes/contributed to acts of direct infringement with the specific intent that others 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 defendants, 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 defendants and/or all others acting in concert therewith;
- b. A permanent injunction enjoining the defendants and their 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 defendants account for and pay to MacroSolve all damages to and costs incurred by MacroSolve because of the defendants' 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 defendants' 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: December 4, 2012

Respectfully submitted,

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