

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

INGENIADOR, LLC	§	
	§	
Plaintiff,	§	CIVIL ACTION NO. 2:12-cv-813
	§	
v.	§	JURY TRIAL DEMANDED
	§	
VITAL IMAGES, INC. and	§	
TOSHIBA MEDICAL SYSTEMS	§	
CORPORATION, INC.	§	
	§	
Defendants.	§	

COMPLAINT FOR PATENT INFRINGEMENT

TO THE HONORABLE COURT:

COMES NOW, Plaintiff Ingeniador, LLC (“Ingeniador”), through the undersigned attorneys, and respectfully alleges, states, and prays as follows:

I. NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 of the United States Code (“U.S.C.”) to prevent and enjoin Defendants Vital Images, Inc. (hereinafter “Vital Images”) and Toshiba Medical Systems Corporation, Inc. (hereinafter “TMSC”), (collectively, “Defendants”) from infringing and profiting, in an illegal and unauthorized manner and without authorization and/or consent from Ingeniador, from U.S. Patent No. 6,990,629 (the “629 patent”, attached hereto as Exhibit “A”) pursuant to 35 U.S.C. §271, and to recover damages, attorneys’ fees, and costs.

II. THE PARTIES

2. Plaintiff Ingeniador is a Puerto Rico limited liability company with its principal place of business at 1607 Colón St. #101, San Juan, Puerto Rico 00911.

3. Defendant Vital Images is a Minnesota corporation with a principal place of business at 5850 Opus Parkway, Suite 300, Minnetonka, Minnesota 55343-4414.

4. Defendant TMSC is a Japanese corporation with its principal place of business at 1385 Shimoishigami, Otawara-Shi, Tochigi 324-8550. Its agent is Mr. Paul Biggins at Toshiba America Medical System, Inc., 2441 Michelle Dr., Tustin, California 92780.

5. Vital Images is wholly owned subsidiary of TMSC.

6. Vital Images became a wholly owned subsidiary of TMSC in 2011.

7. Defendants are in the business of making, using, distributing and/or selling a web-based tool which allows users to access content (such as medical imaging) via the Internet.

III. JURISDICTION AND VENUE

8. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a) because the action arises under the Patent Laws of the United States, 35 U.S.C. §§ 1 *et seq.*

9. This Court has personal jurisdiction over Defendants by virtue of its systematic and continuous contacts with this jurisdiction, as alleged herein, as well as because of the injury to Ingeniador and the cause of action Ingeniador has raised, as alleged herein.

10. Each of the Defendants 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 its substantial business in this forum, including: (i) at least a portion of the infringements alleged

herein; and (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 Judicial District.

11. Defendants have conducted and do conduct business within the state of Texas, including the geographic region within the Eastern District of Texas, directly or through intermediaries, resellers or agents, or offer for sale, sell, advertise (including, but not limited to, the use of interactive web pages with promotional material) products or services, or use or induce others to use services or products in Texas that infringe the '629 Patent, knowingly induce others to infringe and/or contributes to infringement of the '629 Patent occurring within Texas and elsewhere.

12. In addition to Defendants' continuously and systematically conducting business in Texas, the causes of action against Defendants are connected (but not limited) to Defendants' purposeful acts committed in the state of Texas, including the geographic region within the Eastern District of Texas, including Defendants' making, using, offering for sale, or selling web-based products configured to edit and publish content. The Defendants' products comprise features that fall within the scope of at least one claim of the '629 Patent.

13. Venue lies in this judicial district pursuant to 28 U.S.C. §§1391 and 1400(b).

IV. JOINDER

14. Defendants are properly joined under 35 U.S.C. §299(a)(1) because a right to relief is asserted against the parties jointly, severally, and in the alternative with respect to the same transactions, occurrences, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, and/or selling the same accused

products. Specifically, as alleged in detail below, Defendants are alleged to infringe the ‘629 Patent with respect to the same web-based editing and publishing systems including, but not limited to, VITREA ENTERPRISE SUITE (hereinafter, “VITREA”).

15. Defendants are properly joined under 35 U.S.C. §299(a)(2). Questions of fact will arise that are common to both defendants, including for example, whether Defendants’ products have features that meet the features of one or more claims of the ‘629 Patent, and what reasonable royalty will be adequate to compensate the owner of the ‘629 Patent for its infringement.

16. Defendant Vital Images is a wholly-owned subsidiary of TMSC. On or around 2011, TMSC acquired Vital Images. Both offer the same web-based solution that infringes on the ‘629 Patent by virtue of TMSC’s ownership of Vital Images.

17. Defendants offer the web-based solution which infringes on the ‘629 Patent. For example, VITREA is a network system that provides access to authorized users via web-enabled channels to patient images. VITREA’s underlying technology gives physicians and other medical specialists the option to access patient images and related data via the Web in real time.

18. At least one right to relief is asserted against these parties jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product and/or process.

V. FACTUAL ALLEGATIONS

19. On January 24, 2006, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ‘629 patent, entitled “Publishing System for Intranet” after a full and

fair examination. A true and correct copy of the '629 patent is attached hereto as Exhibit "A". Ingeniador is presently the owner of all right, title and interest in and to the '629 patent. Ingeniador possesses all rights of recovery under the '629 patent, including the exclusive right to recover for past infringement. The '629 patent is valid and enforceable.

20. The '629 patent contains two independent claims and twenty-three dependent claims. Defendants commercialize methods that perform all the steps recited in one or more claims of the '629 patent. Each of the Defendants makes, uses and sells or offers for sale products that encompass one or more of the patented claims.

21. The invention claimed in the '629 patent includes a system and process for web-based editing and publishing of files using a network of client computers, a network file server and a Light Weight Directory Access Protocol (LDAP) directory server.

22. The LDAP directory server is adapted to store information defining and limiting the rights of authors and readers in the system. For example, electronic health record products use this feature to restrain access or privileges to selected individuals.

23. The network file server is adapted to resolve file server pointers to one or more files on the file server and directory files on the LDAP directory server transmitted from the client computer into requests for files and directory files. For example, electronic health record products use file servers to store patient information. The LDAP directory server stores information on the identity and privileges of users of the network. Therefore, when a user requests patient information on a client computer, the file server and the LDAP directory server interact to identify if the user's identity is associated with the required access privileges in order to allow or deny access to the patient's information.

24. The network file server is adapted to retrieve from the LDAP directory server directory content. The network file server is also adapted to convert the directory content into web publishable information and including web publishable information as part of the requested files displayed on the client computer for editing further parts of the files. For example, electronic health record products display on client computers the name of a user or users and allow editing of the requested file.

VI. DEFENDANTS' PRODUCTS

25. TMSC is a company which was established in October 2003, as a result of the Medical Systems Division of Toshiba Corp. becoming an independent group company specializing in medical diagnostic imaging systems. TMSC is a worldwide provider of diagnostic imaging systems and comprehensive medical solutions, such as CT, X-ray and vascular, ultrasound, nuclear medicine, and MRI systems, as well as information systems for medical institutions. Vital Images is a wholly owned subsidiary of TMSC. Vital Images is a leading provider of advanced visualization and analysis software for physicians and healthcare specialists. Its products provide tools to users to assist in patient care which can be accessed via the Web. The Defendants' infringing web-based applications will be referred to as "VITREA".

26. The VITREA product is a web-based solution that connects its network servers with client computers. VITREA allows users to view patients' medical images anywhere via the Internet, wherein access to such images and information is controlled using LDAP user authentication.

27. The process performed by the VITREA product resolves file pointers into requests for files, such as a request for specific clinical studies associated with a patient.

Furthermore, VITREA has the capability to resolve file pointers into requests for directory files for authentication when a user logs in with his or her credentials.

28. Moreover, VITREA has the capability to retrieve directory content (e.g., usernames), which is then converted into web-publishable information displayed together with image files. Users can further edit and manage the images retrieved.

VII. DIRECT INFRINGEMENT

29. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-28.

30. Taken together, either partially or entirely, the features included in Defendants' platform, including but not limited to, products called "VITREA", perform the method recited in one or more process claims of the '629 Patent.

31. Taken together, either partially or entirely, the features included in Defendants' network based content access and editing solution including, but not limited to, the product sold as "VITREA," utilizes the system recited in one or more claims of the '629 Patent.

32. Defendants directly infringes one or more of the claims of the '629 Patent by making, using, selling, offering to sell and/or importing products for network based content access and editing, such as "VITREA", which illegally performs and uses the process and system defined by the claims of the '629 Patent, in violation of 35 USC § 271(a).

VIII. INDIRECT INFRINGEMENT

INDUCING INFRINGEMENT

33. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-32.

34. Defendants have had knowledge of the '629 Patent for at least ten years because public records show that the '629 Patent has been cited as "Prior Art" by at least fourteen patents issued by the United States Patent and Trademark Office during that period.

35. Additionally and independently, Defendants have had knowledge of its infringement at least as of service of the present complaint.

36. Defendants have been and now are indirectly infringing by way of inducing infringement by others of the '629 Patent in the State of Texas, in this judicial district, and elsewhere in the United States, by, among other things, illegally making, using, importing, offering for sale, and/or selling, products for performing processes and using systems that fall within the scope of one or more claims of the '629 Patent, in violation of 35 USC § 271(b). Such products include, without limitation, Defendants' VITREA.

37. Defendants indirectly infringe one or more claims of the '629 Patent by actively inducing their consumers, users, subscribers and licensees who directly infringe due to their use of the "VITREA" product.

38. Furthermore, Defendants indirectly infringe one or more claims of the '629 Patent by actively inducing third-party developers to create applications enabling functionality including, without limitation, the function to make use of the services offered and sold by TMSC and Vital Images, who directly infringe one or more claims of the '629 Patent due to their use of the VITREA product.

CONTRIBUTORY INFRINGEMENT

39. Plaintiff realleges and incorporates by reference the allegations set forth in paragraphs 1-38.

40. Defendants contribute to the infringement by others of one or more of the claims of the '629 Patent in violation of 35 USC 271(c).

41. With knowledge of the patent in suit, Defendants indirectly infringe the '629 Patent by contributing to the direct infringement of a class of actors which includes the end-users of the Defendants' products (including the VITREA product), as well as consumers, users, subscribers and licensees, by encouraging the class of actors to operate the Defendants' products, aware of the fact that such acts amount to infringement of one or more claims of the '629 Patent.

42. Products sold by the Defendants for implementation of the Defendants' Products (including, without limitation, the VITREA product) are components of a patented device covered by one or more claims of the '629 Patent, which constitute a material part of the invention and are not staple articles or commodity of commerce suitable for substantial noninfringing use.

43. Defendants have known that devices that implement Defendants' Products are especially made or especially adapted for use in infringement of the '629 Patent at least as of service of the present complaint.

IX. DEMAND FOR JURY TRIAL

Ingeniador demands a trial by jury of any and all causes of action.

X. PRAYER FOR RELIEF

WHEREFORE, Ingeniador prays for the following relief:

1. That Defendants be adjudged to have infringed the '629 Patent, directly and/or indirectly, by way of inducement and/or contributory infringement, literally and/or under the doctrine of equivalents;
2. That Defendants, their officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly and/or indirectly infringing the '629 Patent;
3. An award of damages pursuant to 35 U.S.C. §284 sufficient to compensate Ingeniador for the Defendants' past infringement and any continuing or future infringement up until the date that Defendants are finally and permanently enjoined from further infringement, including compensatory damages;
4. An assessment of pre-judgment and post-judgment interest and costs against Defendants, together with an award of such interest and costs, in accordance with 35 U.S.C. §284;
5. That Defendants be directed to pay enhanced damages, including Ingeniador's attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. §285;
and
6. That Ingeniador have such other and further relief as this Court may deem just and proper.

Dated: December 20, 2012

Respectfully Submitted,

By: /s/ William E. Davis, III
William E. Davis, III
Texas State Bar No. 24047416
The Davis Firm, PC
111 West Tyler Street
Longview, Texas 75601
Telephone: (903) 230-9090
Facsimile: (903) 230-9661
Email: bdavis@bdavisfirm.com

**ATTORNEY FOR PLAINTIFF
INGENIADOR, LLC**