

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

SELECT NOTIFICATIONS MEDIA, LLC,

Plaintiff

v.

EARTHLINK, INC.; EARTHLINK TELECOM,
INC.; EARTHLINK SHARED SERVICES,
LLC; EARTHLINK CARRIER, LLC; and
EARTHLINK BUSINESS, LLC,

Defendants

Civil Action No. 6:12-cv-959

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Select Notifications Media, LLC (“SNM” or “Plaintiff”), for its Complaint against Defendants Earthlink, Inc., Earthlink Telecom, Inc., Earthlink Shared Services, LLC, Earthlink Carrier, LLC, and Earthlink Business LLC (collectively, “Defendants” or “Earthlink”), alleges the following:

THE PARTIES

1. Plaintiff SNM is a Texas limited liability company, having its principal place of business at 106 Fannin Avenue East, Round Rock, Texas 78664.

2. On information and belief, Earthlink, Inc. is a Delaware company, having a principal place of business at 1375 Peachtree St. NE, Atlanta, GA 30309. Earthlink, Inc. has designated National Registered Agents, Inc., 1021 Main Street, Suite 1150, Houston, TX 77002 as its registered agent for service of process.

3. On information and belief, Earthlink Telecom, Inc. is a Texas company, having a principal place of business at 100 N. Central Expressway, Suite 1020, Richardson, Texas 75080.

Earthlink Telecom, Inc. has designated MD Nurul Haque, 100 N. Central Expressway, Suite 1020, Richardson, Texas 75080 as its registered agent for service of process.

4. On information and belief, Earthlink Shared Services, LLC is a Delaware company, having a principal place of business at 1021 Main Street, Suite 1150, Houston, Texas 77002. Earthlink Shared Services, LLC has designated National Registered Agents, Inc., 1021 Main Street, Suite 1150, Houston, TX 77002 as its registered agent for service of process.

5. On information and belief, Earthlink Carrier, LLC is a Delaware company, having a principal place of business at 1375 Peachtree Street NE, Atlanta, Georgia 30309. Earthlink Carrier, LLC has designated National Registered Agents, Inc., 1021 Main Street, Suite 1150, Houston, TX 77002 as its registered agent for service of process.

6. On information and belief, Earthlink Business, LLC is a Delaware company, having a principal place of business at 1375 Peachtree Street NE, Atlanta, Georgia 30309. Earthlink Business, LLC has designated National Registered Agents, Inc., 1021 Main Street, Suite 1150, Houston, TX 77002 as its registered agent for service of process.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

9. This Court has personal jurisdiction over Earthlink Telecom, Inc. because it was incorporated in Texas and has purposely availed itself of the privileges and benefits of the laws of the State of Texas. Furthermore, this Court has personal jurisdiction over all Defendants because, on information and belief and as described further below, Defendants have committed, aided, abetted, contributed to, and/or participated in the commission of acts of patent infringement giving rise to this action within Texas and within this judicial district and have at

least established minimum contacts with the forum state such that the exercise of jurisdiction over Defendants does not offend traditional notions of fair play and substantial justice.

10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391 and 1400(b) because Earthlink is subject to personal jurisdiction in this judicial district and because Earthlink has committed aided, abetted, contributed to, and/or participated in the commission of acts of patent infringement and has a regular and established place of business in this district.

JOINDER

11. Joinder of Defendants is proper under 35 U.S.C. § 299. The allegations of patent infringement contained herein arise out of the same transaction, occurrence, or series of transactions or occurrences relating to the making, using, offering for sale, and/or sale within the United States, and/or importing into the United States, of products and/or services for handling and redirecting certain unresolved domain name requests, including but not limited to Earthlink Finder.

12. Common questions of fact relating to Defendants will arise in this action.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 7,631,101

13. SNM re-alleges and incorporates herein by reference the allegations stated in counterclaim paragraphs 1 through 12 above.

14. On December 8, 2009, U.S Patent No. 7,631,101 (“the ’101 Patent”), entitled “Systems and Methods for Direction of Communication Traffic,” was duly and legally issued by the United States Patent and Trademark Office to inventors Alan T. Sullivan, Mark Lewyn, and Phillip Gross. A true and correct copy of the ’101 Patent is attached as Exhibit A to this Complaint.

15. SNM is the owner of all rights, title, and interest in the ’101 Patent, and has the right to bring this suit to recover damages for infringement of the ’101 Patent.

16. On information and belief, Earthlink has infringed at least one of the method claims of the '101 Patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, by making, using, offering for sale, and/or selling in the United States, and/or importing into the United States, products and/or services for handling and redirecting certain unresolved domain name requests, including but not limited to Earthlink Finder.

17. On information and belief, Earthlink has profited from infringement of the '101 Patent. SNM has suffered damages as a result of Earthlink's infringement of the '101 Patent, and is entitled to recover from Earthlink damages adequate to compensate it for the infringement under 35 U.S.C. § 284, but in no event less than a reasonable royalty.

18. On information and belief, Earthlink had actual knowledge of the '101 Patent at least as early as 2010. In 2010, Earthlink contracted with Paxfire, Inc. ("Paxfire") for provision of error redirection software, hardware, and services covered by the '101 Patent, which Paxfire owned at the time. Paxfire disclosed the existence of the '101 Patent to Earthlink and, as part of the contract, granted to Earthlink a license to all of Paxfire's intellectual property for the period during which the contract was in effect. A few months later, Earthlink terminated the Paxfire contract, though it has continued to practice the method disclosed in the '101 Patent to this day.

19. On information and belief, Earthlink has acted with knowledge of the '101 Patent and of its infringement. Accordingly, Earthlink has willfully infringed the '101 Patent, making this an exceptional case and entitling SNM to enhanced damages, reasonable attorney's fees, and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiff SNM prays for judgment as follows:

(a) A judgment in favor of SNM that Earthlink has infringed and continues to infringe, literally or under the doctrine of equivalents, U.S. Patent No. 7,631,101;

(b) An award to SNM of damages to which it is entitled for Earthlink's infringement, including both compensatory damages and enhanced damages for willful infringement, and ordering a full accounting of same;

(c) That this case be adjudged an exceptional case;

(d) That this Court award SNM its costs and disbursements in this civil action, including reasonable attorneys' fees;

(e) That this Court award SNM pre-judgment and post-judgment interest on its damages; and

(f) That this Court award SNM such other and further relief in law or in equity that the Court deems just and proper.

DEMAND FOR JURY TRIAL

Defendant SNM hereby demands a trial by jury on all issues so triable.

Dated: December 21, 2012

Respectfully submitted,

/s/ Jennifer Parker Ainsworth
Jennifer Parker Ainsworth
Texas State Bar No. 00784720
jainsworth@wilsonlawfirm.com
WILSON, ROBERTSON & CORNELIUS, P.C.
909 ESE Loop 323, Suite 400
P.O. Box 7339 [75711]
Tyler, Texas 75701
Telephone: (903) 509-5000
Facsimile: (903) 509-5092

Attorney for Plaintiff
Select Notifications Media, LLC