

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

BEELINE.COM, INC.

Plaintiff,

- VS. -

NEXTSOURCE, INC.

Defendant.

§ §

Civil Action No. 2:12-cv-708-JRG

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which plaintiff, Beeline.com, Inc. (“Beeline”), by its counsel, Bryan Cave LLP, makes the following allegations in support of its First Amended Complaint against defendant, nextSource, Inc. (“nextSource”):

PARTIES

1. Beeline is a Florida corporation with its principal place of business at 12724 Gran Ban Parkway West, Suite 200, Jacksonville, FL 32258-4467. Beeline draws on its proprietary technology to innovate and develop various software systems, products, and services, including vendor management systems and intelligent workforce solutions. Among other things, Beeline's software streamlines and optimizes the process of hiring and managing a flexible workforce. As a result of this technology, Beeline has become a market leader in providing contingent workforce solutions.

2. On information and belief, nextSource is a Delaware corporation with its principal place of business at 3 Park Avenue, 15th Floor, New York, NY 10016.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 U.S.C. §§ 1, *et seq.* Accordingly, this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. On information and belief, nextSource 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 activities in this forum, including regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in Texas and this District. Further, on information and belief, nextSource has interactive websites comprising infringing systems and methods, which are at least used and/or accessible in this District. In addition, on information and belief, personal jurisdiction is proper because nextSource has committed acts of infringement in this District. Thus, this Court's exercise of jurisdiction over nextSource will not offend traditional notions of fair play and substantial justice.

5. Venue is proper in this District under 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because nextSource is subject to personal jurisdiction in this District, does business in the State of Texas, and the infringing activity has occurred and continues to occur in this District.

BACKGROUND

Beeline's Software Innovations

6. Beeline is a software company that is well-known for being a pioneer of intelligent workforce solutions. Since its inception, Beeline has invested significant resources into developing and improving proprietary systems and technology that are designed to streamline and optimize various aspects of workforce and project management. Beeline utilizes this proprietary technology to provide its clients with software solutions covering a wide range of services, including vendor management, services procurement, workforce intelligence, and vendor administration and compliance.

7. One area in which Beeline has devoted particular efforts is in creating software systems that make it easier and more cost-efficient for companies and other organizations to manage their flexible workforce. For example, Beeline's Vendor Management Software enables companies to improve cost control, risk mitigation, productivity and quality in the management of their contingent staff through a software-as-a-service, web-based application. Among other things, Beeline's Vendor Management Software automates numerous workforce-related processes and tasks, such as acquiring, utilizing and managing contingent and project based labor, budgeting and tracking billing and payments, consolidating timesheets and invoicing, analyzing and evaluating contingent staff, and generating various reports.

8. As a result of these proprietary software solutions and other technology, Beeline has become a recognized leader in software-as-a-service contingent workforce solutions. Beeline's software solutions are relied upon by a wide range of customers

across virtually all types of industries, including more than a hundred Fortune 500 companies.

U.S. Patent No. 6,742,002

9. Beeline is the owner by assignment of United States Patent number 6,742,002, entitled “Computer-Implemented and/or Computer-Assisted Web Database and/or Interaction System for Staffing of Personnel in Various Employment Related Fields” (“the ‘002 Patent”), with ownership of all substantial rights in the ‘002 Patent, including the right to exclude others and to sue and recover damages for the past and future infringement thereof. The ‘002 Patent issued on May 25, 2004. A true and correct copy of the ‘002 Patent is attached hereto as Exhibit A.

10. The claims of the ‘002 Patent are directed to, *inter alia*, systems and methods that facilitate the staffing of temporary or permanent employees for a client, including systems and methods for storing information related to the staffing of a client’s projects, such as employee data, firm data and order data, utilizing the information to search for and retrieve candidates for assignment to the client, and storing timesheets and feedback associated with the assigned candidates.

11. For example, certain claims of the ‘002 patent are directed to computer-assisted staffing systems having a number of components, including storage components for storing data related to employees, data associated with clients (*e.g.*, customers), and data pertaining to the clients staffing orders, as well as other components (*e.g.*, computer software) for searching the data to identify candidates based on the clients’ orders and assign matching candidates to the client.

nextSource Infringes Beeline's Patent

12. Defendant nextSource is a software company that competes, or seeks to compete, with Beeline. On information and belief, nextSource designs, develops, offers and/or sells, in Texas and throughout the United States, a range of software products and services for workforce management and other human capital related business needs.

13. On information and belief, nextSource's software systems and technology include, among other things, a web-based suite of software solutions that are designed to assist its customers with various aspects of managing their workforce, such as procurement, hiring, payrolling, tracking, and evaluation of contingent labor. As stated on its website, "nextSource's unique suite of products and services manage, implement and optimize workforce needs -- ranging from vendor management programs, salary and rate benchmarking, payrolling, staffing, agency exchange, and procurement and HR consulting services."

14. On information and belief, nextSource's software solutions are provided in the form of a single web-based workforce management platform comprising a number of workforce-related software products and services. For example, according to a May 18, 2010 press release, nextSource stated that it "offers a Software for Service platform encompassing its innovative workforce management solutions that provides a single source, end to end solution for corporate customers for all their staffing and human resources needs [and which] includes TAMS, an industry leading VMS software ... Multiple Listing Staffing Association™ (MLSA), an industry-wide agency exchange, CertifiedPerson, a candidate pre-employment screening application, Payrolling as well as Procurement Consulting Services all under one roof."

15. Defendant nextSource has infringed, and continues to infringe, Beeline's '002 Patent. On information and belief, nextSource's infringing products, services, and technology include, but are not limited to, its vendor management service technology and/or workforce management platform, which include software for storing and utilizing various information pertaining to companies, employees, and other individuals seeking employment and enabling the companies to search for, identify and procure employees and manage other workforce-related tasks, including timekeeping, budgeting, reporting, and employee tracking and evaluation (the "Accused Products").

16. For example, on information and belief, nextSource's workforce management platform includes a Vendor Management Solution, known as Talent Acquisition Management Solution (TAMS), which comprises a web-based application delivered through a software-as-a-service format that automates various processes associated with the management of a contingent workforce. On information and belief, nextSource's TAMS and/or Vendor Management Solution products and services include components that are specifically designed to provide the features and functionalities described and claimed in the '002 Patent.

17. On information and belief, nextSource owns and operates one or more websites (including a website provided at: <http://nextsource.com>) through which it advertises, promotes, offers, and/or provides its TAMS and/or Vendor Management Solution products and services. As stated on its website, for example, TAMS and/or Vendor Management Solution "automates the entire acquisition and management life cycle for temporary workers, consultants, contractors, direct hires and project deliverables anywhere in the world." The website also explains that TAMS "offers

functionality to simplify timekeeping and invoicing, online requisitioning and approvals, and online purchase order generation and approvals,” as well as reporting, budgeting, and tracking and monitoring performance.

18. On information and belief, nextSource also promotes and emphasizes the importance of these and other features and functionalities through various advertising and marketing materials (*e.g.*, media kits, white papers, demos, etc.) associated with its TAMS and/or Vendor Management Solution products and services that are distributed and/or made available to its customers (and potential customers). For example, according to a media kit distributed by nextSource, these products and services enable nextSource’s customers to “automate, streamline and optimize workforce management process and procedures..., including: vendor management, payrolling, sourcing, staffing, recruiting...and more.” Among other things, nextSource’s media kit explains that TAMS was designed and developed by nextSource to provide functionality that enables its customers to manage their projects and staffing needs, search for, select and manage vendors and candidates, simplify the tracking and approval of timekeeping and invoicing, and provide and access candidate histories and evaluations.

19. On information and belief, nextSource also provides its customers with various instructional materials, such as user manuals, guides and help files, as well as other forms of support, such as training and technical support, in connection with its customers’ use of nextSource’s TAMS and/or Vendor Management Solution products and services. In turn, on information and belief, the TAMS and/or Vendor Management Solution products and services are used by nextSource’s customers throughout the United

States, including within this District and elsewhere in Texas, to practice the inventions described and claimed in the '002 Patent.

20. On information and belief, nextSource has numerous employees and/or independent contractors who regularly visit the customers' locations and/or who are primarily based at the customers' locations, including locations in this district and elsewhere in Texas, in order to assist such customers with the use of nextSource's TAMS and/or Vendor Management Solution products and services. On information and belief, some of these nextSource employees and/or independent contractors operate, or oversee the operation of, the TAMS and/or Vendor Management Solution products and services on behalf of such customers at these locations.

nextSource's Infringement Harms Beeline

21. Beeline is harmed by nextSource's use of Beeline's patented technologies in a way that cannot be remedied by monetary damages alone. nextSource has received substantial revenue and increased market share by selling software products and services that practice, and/or that enable its customers to practice, the technology described in the '002 Patent without having to incur the costs of developing or licensing this technology.

22. On information and belief, nextSource's infringement has caused Beeline to suffer irreparable harm due to, among other things, lost business opportunities, lost market share, and price erosion. Even if nextSource were to subsequently pay past due royalties, lost profits, or other damages, there is no reason to believe that nextSource would stop infringing, and it would still enjoy the market share it has developed while infringing upon, the '002 Patent. Due to the difficulty in predicting whether, if at all,

Beeline can recover this market share, Beeline's harm cannot be compensated by payment of monetary damages alone.

INFRINGEMENT OF U.S. PATENT NO. 6,742,002

23. Beeline incorporates by reference the preceding averments set forth in paragraphs 1-22.

24. In violation of 35 U.S.C. § 271(a), nextSource has been and is directly infringing the '002 Patent, either literally or under the doctrine of equivalents by, among other things, making, using, selling, and/or offering for sale in this district and elsewhere in the United States, systems and methods, including, but not limited to, nextSource's TAMS and Vendor Management Solution, which comprise software products, services and/or technology that facilitate workforce management in a manner covered by one or more claims of the '002 Patent.

25. On information and belief, nextSource's employees and/or independent contractors have been and are directly infringing the '002 Patent in violation of 35 U.S.C. § 271(a), either literally or under the doctrine of equivalents by, among other things, operating, overseeing the operation of, and/or otherwise using systems and methods, including, but not limited to, nextSource's TAMS and Vendor Management Solution, on behalf of nextSource's customers at locations within this district and elsewhere in the United States, in a manner covered by one or more claims of the '002 Patent.

26. On information and belief, at least since the commencement of this action, nextSource has induced and continues to induce others to infringe the '002 Patent in violation of 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting infringement by others, including its customers,

whose use of the Accused Products in this district and elsewhere in the United States constitutes direct infringement of one or more claims of the '002 Patent. On information and belief, nextSource's actions have been and are, among other things, successfully encouraging, instructing, enabling and otherwise causing its customers to use the Accused Products, including by purchasing, accessing and/or using the Accused Products through nextSource's websites and/or web-based platforms, having been provided by nextSource for the primary purpose of causing infringing acts by its customers.

27. For example, on information and belief, nextSource has been causing and continues to cause such infringements by, at a minimum, providing its customers with materials and information that instructs and directs the customers to use the features and functionalities of the Accused Products, including, but not limited to, nextSource's TAMS and Vendor Management Solution, in a manner that infringes the '002 Patent. On information and belief, nextSource has been and is engaging in such actions with specific intent to induce infringement or with willful blindness to the resulting infringement because it has had actual knowledge of the '002 Patent, and the fact that its actions have induced and will continue to induce infringement of the '002 Patent by its customers, at least since the commencement of this action.

28. Upon information and belief, at least since the commencement of this action, nextSource has contributed and continues to contribute to infringement of the '002 Patent in violation of 35 U.S.C. § 271(c) by, among other things, selling, offering for sale and/or otherwise providing the Accused Products to others, including its customers, in this district and elsewhere in the United States, knowing that components of the Accused Products constitute a material part of the invention, were especially made

or especially adapted for use in an infringement of one or more claims of the '002 Patent, and have no substantial non-infringing uses.

29. For example, on information and belief, the Accused Products, including nextSource's TAMS and Vendor Management Solution, comprise especially designed and adapted components that, among other things, store various data related to its customers and available employees, enable its customers and on-site employees to search for, view and select available employees and assign them to the customer, and access and manage various data associated with their projects and assigned employees, such as timesheets and feedback. On information and belief, these components are not staple articles or commodities of commerce and their only purpose is to provide certain of the features and functionality required by one or more claims of the '002 patent and, therefore, these components have no substantial non-infringing uses.

30. On information and belief, the Accused Products, including nextSource's TAMS and Vendor Management Solution, are used by nextSource's customers and on-site employees and/or independent contractors, in conjunction with other components provided by the customers (*e.g.*, data pertaining to the customer and the customer's staffing orders), in order to access and use a system comprising all of the elements recited by one or more claims of the '002 Patent. On information and belief, nextSource has known and knows of these infringing activities because it has had actual knowledge of the '002 Patent, as well as the fact that its actions have contributed to and will continue to contribute to the infringement of the '002 Patent by its customers, at least since the commencement of this action.

31. Beeline has been and continues to be damaged by nextSource's infringement of the '002 Patent in an amount to be determined at trial.

32. The acts of infringement by nextSource identified herein have caused and will continue to cause irreparable injury to Beeline, for which it has no adequate remedy at law, unless and until nextSource is enjoined from further infringement by this Court in accordance with 35 U.S.C. § 283. Considering the competitive relationship and balance of the hardships between the parties, a remedy in equity, such as a permanent injunction is warranted and would be in the public interest.

PRAYER FOR RELIEF

Wherefore, Beeline respectfully requests that this Court enter:

- A. A judgment in favor of Beeline that nextSource has infringed the '002 Patent;
- B. A permanent injunction enjoining nextSource, its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents and all others acting in active concert or privity therewith from direct, indirect and/or joint infringement of the '002 Patent pursuant to 35 U.S.C. § 283;
- C. A judgment and order requiring nextSource to pay Beeline its damages, costs and expenses with pre-judgment and post-judgment interest thereon pursuant to 35 U.S.C. § 284;
- D. A judgment and order finding that this case is an exceptional case pursuant to 35 U.S.C. § 285 and awarding Beeline its reasonable attorney's fees and costs incurred in connection with this action; and
- E. Any and all further relief to which the Court may deem Beeline entitled.

DEMAND FOR JURY TRIAL

Beeline hereby respectfully requests a trial by jury on all issues in this action so triable by right pursuant to Rule 38 of the Federal Rules of Civil Procedure.

Dated: January 24, 2013

/s/ E. Glenn Thames, Jr.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on January 24, 2013, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ E. Glenn Thames, Jr.

E. Glenn Thames, Jr.