

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

WAPP TECH LIMITED
PARTNERSHIP and
WAPP TECH CORP.,
Plaintiffs,

v.

SEATTLE SPINCO INC., ENTIT
SOFTWARE LLC, ENTCO
INTERACTIVE (ISRAEL) LTD,
ENTCO GOVERNMENT
SOFTWARE LLC, and MICRO
FOCUS (US) INC.,
Defendants.

Civil Action No.: 4:18-cv-469

JURY TRIAL DEMANDED

PLAINTIFFS' SECOND AMENDED COMPLAINT

Plaintiffs Wapp Tech Limited Partnership and Wapp Tech Corp. (“Plaintiffs”) file this Complaint against Defendants, Seattle SpinCo Inc., EntIT Software LLC, EntCo Interactive (Israel) Ltd, Entco Government Software LLC, and Micro Focus (US) Inc. (collectively “Defendants” or “Micro Focus”) seeking damages and other relief for patent infringement, and allege with knowledge of their own acts, and on information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, *et seq.*

2. Plaintiffs seek damages and prejudgment and post-judgment interest for Defendants' infringement of the Patents-in-Suit, as defined below.

3. The Patents-in-Suit and their underlying patent applications have been cited by over 30 issued United States patents and published patent applications.

PARTIES

4. Plaintiff Wapp Tech Limited Partnership is a Delaware limited partnership organized and existing under the laws of the State of Delaware, and its registered agent for service of process in Delaware is Corporations & Companies, Inc. (CorpCo), 910 Foulk Road, Suite 201 Wilmington, Delaware 19803.

5. Plaintiff Wapp Tech Corp. ("WTC") is a body corporate organized and existing under the laws of the Province of Alberta, Canada, and its registered agent for service of process in Delaware is Corporations & Companies, Inc. (CorpCo), 910 Foulk Road, Suite 201 Wilmington, Delaware 19803.

6. Defendant Seattle SpinCo, Inc. ("Seattle SpinCo") is a Delaware corporation with its principal place of business at 1209 Orange St., Wilmington New Castle, DE 19801. Seattle SpinCo is a direct wholly-owned sub of Seattle Holdings, Inc.

7. Defendant EntIT Software LLC is a Delaware corporation with its principal place of business at 1209 Orange St., Wilmington New Castle, DE 19801. EntIT Software LLC is a direct wholly-owned subsidiary of Seattle SpinCo and has approximately 298 employees located in Texas with 137 employees in Plano, Texas.

8. Defendant EntCo Interactive (Israel) Ltd is incorporated in Israel and, on information and belief, has offices at Rehov Avraham Atalef 5, 5621600 Yahud Monoson, Israel.

9. Defendant Entco Government Software LLC is a Delaware corporation with its principal place of business at 1209 Orange St., Wilmington New Castle, DE 19801. Entco Government Software LLC is a direct subsidiary of Seattle SpinCo and has about 13 employees located in Texas with 4 employees in Plano, Texas.

10. Defendant Micro Focus (US) Inc. is a Delaware corporation with its principal place of business at One Irvington Center, 700 King Farm Boulevard, Suite 400, Rockville, Maryland 20850. Micro Focus (US) Inc. has about 34 employees located in Texas with 12 employees in Plano, Texas.

11. On information and belief, an agreement dated September 7, 2016, was entered into by Hewlett Packard Enterprise Company (“HPE”), Micro Focus International plc (“Micro Focus Int’l”), Seattle SpinCo, Seattle Holdings, Inc., and Seattle MergerSub, Inc. (“Agreement and Plan of Merger”). As part of that agreement, effective September 1, 2017, Seattle MergerSub, Inc. merged with and into Seattle SpinCo with Seattle SpinCo surviving as a direct, wholly owned subsidiary of Seattle Holdings, Inc. (and as an indirect, wholly owned subsidiary of Micro Focus Int’l). Upon completion of the September 1 merger, HPE shareholders owned 50.1% of the surviving entity, Seattle SpinCo.

12. On information and belief, a series of transactions—defined at least in part by the Agreement and Plan of Merger dated Sept. 7, 2016 and/or the Separation and Distribution Agreement dated Sept. 7, 2016—resulted in a merger between Seattle SpinCo and Micro Focus Int’l, as well as Micro Focus Int’l’s acquisition of various software products, including LoadRunner, StormRunner, Performance Center, and Mobile Center Software.

13. Defendants conduct business in Texas, directly or through intermediaries, and offer products or services, including those accused herein of infringement (e.g., LoadRunner,

StormRunner, Performance Center, and Mobile Center Software), to customers, and potential customers located in Texas, including in the Eastern District of Texas.

JURISDICTION AND VENUE

14. On information and belief, Defendants are registered to do business in the State of Texas.

15. On information and belief, Defendants conduct business operations throughout the State of Texas, and within the Eastern District of Texas in facilities in Plano, Texas.

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a). Venue is proper under 28 U.S.C. §§ 1391(a) & (c), and 1400(b).

INTRODUCTION

17. The inspiration for the pioneering patented innovations described herein originates from Plaintiffs' application development work associated with the 2006 FIFA World Cup sponsored by Adobe and Nokia. The FIFA World Cup is the largest single-event sporting competition in the world with fans simultaneously accessing the World Cup app from millions of mobile devices around the globe. Through its development work associated with this international sporting event, the principal inventor of the Patents-in-Suit developed and created its patented performance engineering platform. Application performance engineering enables software design and testing before it is published to a consumer by simulating real-world conditions for app developers while in the development phase, including device and network virtualization, virtual user modeling and the ability to virtually perform stress and load tests based on modeling human interaction (hereafter "Performance Engineering Innovations").

18. Licensed products incorporating the Performance Engineering Innovations have won numerous industry awards for mobile application development, including multiple JOLT Awards and other industry leading awards for market breakout products.

19. Patents related to the Performance Engineering Innovations have been licensed by a Fortune 500 leader in enterprise software in a multi-million dollar license.

20. In addition, patents in the Plaintiffs' Patent Portfolio, defined below, have been cited against a number of industry-leading companies as prior art by the United States Patent and Trademark Office (hereafter "USPTO") and WIPO. These companies include:

- Hewlett-Packard
- Apple
- Samsung
- Microsoft
- Google
- Vodafone
- Intuit
- Avaya
- Intel
- Amazon
- HTC
- Nextbit Systems
- CA
- Facebook
- Barco
- Razor
- Adobe

MICRO FOCUS & HPE

21. Certain software products of Defendants are alleged herein to infringe the Patents-in-Suit.

22. On information and belief, HPE and Seattle SpinCo entered into a Separation and Distribution Agreement on September 7, 2016. Per this agreement, Seattle SpinCo acquired certain

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