

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

PANTHER INNOVATIONS, LLC,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

CIVIL ACTION NO. 6:20-cv-1071

JURY TRIAL DEMANDED

PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Panther Innovations, LLC (“Panther” or “Plaintiff”) files this Complaint for patent infringement against Microsoft Corporation (“Microsoft” or “Defendant”) and states as follows:

NATURE OF THE ACTION

1. This is a civil action for patent infringement under the patent laws of the United States of America, 35 U.S.C. § 1 *et seq.*
2. Panther is the owner of all right, title, and interest in U.S. Patent Nos. 7,840,652 (the “652 Patent”) and 8,069,231 (the “231 Patent”) (collectively “the Asserted Patents”), which are attached as Exhibits A and B and incorporated herein by reference.
3. Defendant Microsoft has infringed and continues to infringe one or more claims of the Asserted Patents by making, using, offering to sell, and selling within the United States, including in this District, certain products and services. Panther seeks to recover monetary damages, attorneys’ fees, and costs.

THE PARTIES

4. Panther is a Texas limited liability company with a principal place of business at 2325 Oak Alley, Tyler, Texas 75703.

5. Defendant Microsoft is a corporation organized under the laws of the State of Washington, with its principal place of business at 1 Microsoft Way, Redmond, Washington 98052. Defendant may be served via its registered agent, Corporation Service Company, at 211 East 7th Street, Suite 620, Austin, Texas 78701.

6. Microsoft has been registered to do business in the state of Texas under Texas SOS file number 0006776606 since at least 1986.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

8. This Court has personal jurisdiction over Defendant because Defendant does continuous and systematic business in this District, including by providing infringing products and services to the residents of the Western District of Texas that Defendant knew would be used within this District, and by soliciting business from the residents of the Western District of Texas. For example, Defendant is subject to personal jurisdiction in this Court because, *inter alia*, Defendant has regular places of business in the District at 10900 Stonelake Boulevard, Suite 225, Austin, Texas 78759 and Concord Park II, 401 East Sonterra Boulevard, Suite 300, San Antonio, Texas 78258. Defendant directly, and through agents, regularly does, solicits, and transacts business in the Western District of Texas.

9. Defendant has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271 within the Western District of Texas. Defendant has in the past made, used,

marketed, distributed, offered for sale, sold, and/or imported infringing products, and performed infringing methods, in the State of Texas and in the Western District of Texas. Defendant continues to make, use, market, distribute, offer for sale, sell, and/or import infringing products, and perform infringing methods, in the State of Texas and in the Western District of Texas. Accordingly, Defendant has in the past engaged, and continues to engage, in infringing conduct within and directed at or from this District. Additionally, Defendant has purposefully and voluntarily placed its infringing products into the stream of commerce with the expectation that its infringing products will be used in this District. The infringing products have been and continue to be distributed to and used in this District. Upon information and belief, the infringing products have been and continue to be distributed from this District. Defendant's acts have caused, and continue to cause, injury to Plaintiff, including within this District.

10. Venue is proper in this District under the provisions of 28 U.S.C. §§ 1391 and 1400(b) at least because Defendant has committed acts of infringement in this District and has a regular and established places of business in this District at 10900 Stonelake Boulevard, Suite 225, Austin, Texas 78759 and Concord Park II, 401 East Sonterra Boulevard, Suite 300, San Antonio, Texas 78258.

BACKGROUND

11. Years before Microsoft added the accused functionality to its Windows operating system, Ascentive, LLC was developing intellectual property directed to optimizing network speeds. Adam Schran and Robert Darlington, the named inventors of the Asserted Patents, sought to address the inefficiency in the Internet connection by computers and the difficulty of adjusting network configuration settings of a computer for Internet data transfer. Mr. Schran and Mr. Darlington conceived of a novel way of optimizing a computer's Internet connection by selecting

from groups of network configuration settings and conducting one or more performance tests to automatically adjust the configuration settings to enhance the end-user's Internet performance. This invention resulted in the Asserted Patents.

U.S. PATENT NO. 7,840,652

12. On October 15, 2004, the United States Patent and Trademark Office duly and legally issued the '652 Patent, entitled "System and method for determining network configuration settings that provide optimal network performance" after a full and fair examination.

13. Exhibit A is a true and correct copy of the '652 Patent.

14. The '652 Patent is valid and enforceable under United States patent laws.

15. Plaintiff is the owner of the '652 Patent, having received all right, title and interest in and to the '652 Patent from the previous assignee of record.

16. Plaintiff possesses all rights of recovery under the '652 Patent, including the exclusive right to recover for past infringement.

U.S. PATENT NO. 8,069,231

17. On November 29, 2011, the United States Patent and Trademark Office duly and legally issued the '231 Patent, entitled "Computer program product for determining a group of network configuration settings that provide optimal network performance" after a full and fair examination.

18. Exhibit B is a true and correct copy of the '231 Patent.

19. The '231 Patent is valid and enforceable under United States patent laws.

20. Plaintiff is the owner of the '231 Patent, having received all right, title and interest in and to the '231 Patent from the previous assignee of record.

21. Plaintiff possesses all rights of recovery under the '231 Patent, including the exclusive right to recover for past infringement.

THE ASSERTED PATENTS

22. The claims of the Asserted Patents are directed to patent-eligible, non-abstract inventions.

23. The Asserted Patents address, among other things, specific technological improvements for optimizing Internet data transfer speeds. For example, when a computer connects to a server across a TCP/IP network, such as using a home computer to connect to www.bing.com, that computer's operating system connects using certain user-selectable pre-configured TCP/IP settings. However, optimal settings for connecting to that server or any other server are not static; optimal settings for connections to that server will vary across time based on certain factors such as congestion and server demand. *See, e.g.*, Ex. A '652 Patent at 1:30-50. The Asserted Patents are directed to optimizing that connection by automatically adjusting specific user-selectable TCP/IP network settings by selecting from groups of network configuration settings and conducting one or more performance test to ensure the best data throughput. *See, e.g., id.* at 1:59-2:55. These settings can also be continually tested to ensure an optimal connection in varying situations. *Id.*

24. For instance, the Asserted Patents describe certain TCP/IP settings that can be adjusted to optimize the network connection, including, for example, Maximum Transmission Unit (MTU), Maximum Segment Size (MSS), Receive Window (RWIN), Time to Live (TTL), Black Hole Detection, and MTU Auto Discovery. *See, e.g., id.* at 2:41-46.

25. Figure 3 of the Asserted Patents is illustrated below:

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