

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

SURFCAST, INC.,

Plaintiff,

v.

MICROSOFT CORPORATION,

Defendant.

Case No. 6:21-cv-1018

COMPLAINT

Plaintiff SurfCast, Inc. (“SurfCast”), by and through its attorneys, files this Complaint for Patent Infringement against Defendant Microsoft Corporation (“Microsoft”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action brought by SurfCast for infringement of U.S. Patent No. 9,032,317 (the “317 patent”); U.S. Patent No. 9,043,712 (the “712 patent”); U.S. Patent No. 9,363,338 (the “338 patent”); and U.S. Patent No. 9,946,434 (the “434 patent”) (collectively, the “Asserted Patents”), arising under the patent laws of the United States, Title 35, United States Code, 35 U.S.C. §§ 271 and 281.

PARTIES

2. SurfCast is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1 Belfast Road, Lincolnville, ME 04849.

3. On information and belief, Microsoft is a corporation organized and existing under the laws of the State of Washington, with its corporate headquarters at One Microsoft Way,

Redmond, WA 98052. Microsoft may be served with process through its registered agent, the Corporation Service Company, at 211 East 7th Street, Suite 620, Austin, Texas 78701.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 100 *et seq.*, and this Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant in this action because Defendant has committed acts within this Federal Judicial District giving rise to this action, and has established minimum contacts with this forum such that the exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice. Defendant, directly and through subsidiaries or intermediaries, has committed and continues to commit acts of infringement in this Federal Judicial District by, among other things, importing, offering to sell, and selling products and services that infringe the Asserted Patents.

6. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b).

7. Upon information and belief, Microsoft has committed infringing acts in this Federal Judicial District by making, using, offering for sale, selling, or importing products or services that infringe the Asserted Patents (as defined herein), or by inducing others to infringe the Asserted Patents.

8. Upon information and belief, Microsoft has a regular and established physical presence in this Federal Judicial District, including, but not limited to, ownership of or control over property, inventory, or infrastructure. Microsoft maintains offices in this Federal Judicial District, including, but not limited to, locations at 10900 Stonelake Boulevard, Suite 225, Austin,

Texas 78759;¹ Concord Park II, 401 East Sonterra Boulevard, Suite 300, San Antonio, Texas 78258;² 5150 Rogers Road, San Antonio, Texas 78251; 5200 Rogers Road, San Antonio, Texas 78251;³ and 3823 Wiseman Blvd, San Antonio, Texas 78251,⁴ each of which lie within this Federal Judicial District. On information and belief, Microsoft has been registered to do business in the state of Texas under Texas Secretary of State file number 0010404606 since approximately March, 1987.

9. In other recent actions, Microsoft has either admitted or not contested that this Federal Judicial District is a proper venue for patent infringement actions against it. *See, e.g., Thompson v. Microsoft Corp.*, No. 1:19-cv-00680-RP, Dkt. No. 6; *Panther Innovations v. Microsoft Corp.*, No. 6-20-cv-01071, Dkt. No. 14; *Exafer Ltd. v. Microsoft Corp.*, No. 1-20-cv-00131, Dkt. No. 15; *WSOU Investments, LLC v. Microsoft Corp.*, No. 20-cv-00464, Dkt. No. 20; *Zeroclick, LLC v. Microsoft Corp.*, No. 20-cv-00272, Dkt. No. 14; and *California Institute of Technology v. Microsoft Corp.*, No. 21-cv-00276, Dkt. No. 22.

FACTUAL BACKGROUND

10. U.S. Patent No. 9,032,317 is titled “System and Method For Simultaneous Display of Multiple Information Sources,” which the U.S. Patent and Trademark Office duly and legally issued on May 12, 2015. A true and correct copy of the ’317 patent is attached hereto as Exhibit A.

¹ See <https://news.microsoft.com/2000/01/05/microsoft-opens-austin-texas-facility/> (last accessed September 27, 2021).

² See <https://www.microsoft.com/en-us/about/officelocator?Location=78258> (last accessed September 27, 2021).

³ See <https://www.datacenterhawk.com/providers/microsoft-azure> (last accessed September 27, 2021).

⁴ See <https://www.virtualbox.com/industry-news/san-antonio-microsoft-reaches-mid-point-on-86m-expansion-in-westover-hills/> (last accessed September 27, 2021).

11. U.S. Patent No. 9,043,712 is entitled “System and Method For Simultaneous Display of Multiple Information Sources,” which the U.S. Patent and Trademark Office duly and legally issued on May 26, 2015. A true and correct copy of the ’712 patent is attached hereto as Exhibit B.

12. U.S. Patent No. 9,363,338 is entitled “System and Method For Simultaneous Display of Multiple Information Sources,” which the U.S. Patent and Trademark Office duly and legally issued on June 7, 2016. A true and correct copy of the ’338 patent is attached hereto as Exhibit C.

13. U.S. Patent No. 9,946,434 is entitled “System and Method For Simultaneous Display of Multiple Information Sources,” which the U.S. Patent and Trademark Office duly and legally issued on April 17, 2018. A true and correct copy of the ’434 patent is attached hereto as Exhibit D.

14. Ovid Santoro, Klaus Lagermann, and Tom Dechaene (collectively “the inventors”) are the inventors of each of the Asserted Patents.

15. By virtue of inventor Ovid Santoro’s July 29, 2008 assignment, inventor Tom Dechaene’s December 22, 2008 assignment, and inventor Klaus Lagermann’s October 30, 2012 assignment, SurfCast obtained all rights, title, and interest in the inventions of each of the Asserted Patents.

16. The claims of the Asserted Patents are valid and enforceable.

17. As described in more detail below, Microsoft infringes the Asserted Patents by making, using, selling, and offering to sell devices and software products including operating systems for personal computers, phones, tablet devices, other hardware, mobile devices with the Windows Phone 7 Operating System (“the Windows Phone 7 Products”), the Microsoft Surface

with the Windows RT Operating System, and the Xbox One, such operating systems including Microsoft Windows 8, Microsoft Windows 8 Pro, and Microsoft Windows 8 Enterprise Operating System (the “Windows 8 Accused Products”); Microsoft Windows 8.1, Microsoft Windows 8.1 Pro, and Microsoft Windows 8.1 Enterprise Operating System (the “Windows 8.1 Accused Products”); and Microsoft Windows 10, Microsoft Windows 10 Pro, and Microsoft Windows 10 Enterprise Operating System (the “Windows 10 Accused Products”), and personal computers implementing the Windows 8 Accused Products, the Windows 8.1 Accused Products, and the Windows 10 Accused Products, and all like products, collectively “the Accused Products,” in Texas and throughout the United States.

18. The Accused Products employ a display with a user interface described by Microsoft as follows: “Tiles are the representation of your app on the Start screen. Selecting a tile launches its app. The content shown on your tile can, and ideally should, change regularly, especially if your tile can communicate new, real-time information to your user. Tiles can show a combination of text and images, and a badge to show status.” ([https://docs.microsoft.com/en-us/previous-versions/windows/apps/hh779725\(v=win.10\)](https://docs.microsoft.com/en-us/previous-versions/windows/apps/hh779725(v=win.10))); attached hereto as Exhibit E).

19. On information and belief, on or about July 15, 2015, Microsoft began making, using, offering for sale, and selling the Windows 10 Accused Products in Texas and throughout the United States.

20. On information and belief, on or about August 27, 2013, Microsoft began making, using, offering for sale, and selling the Windows 8.1 Accused Products in Texas and throughout the United States.

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