

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

TUNE HUNTER INC.,

Plaintiff,

vs.

MICROSOFT CORPORATION and
SAMSUNG TELECOMMUNICATIONS
AMERICA, LLC,

Defendant.

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Case No.

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Tune Hunter Inc. (“Tune Hunter”) brings this action against defendants Microsoft Corporation (“Microsoft”) and Samsung Telecommunications America, LLC (“Samsung”) and alleges:

THE PARTIES

1. Tune Hunter is a corporation organized and existing under the laws of Texas. It is the owner of the entire right, title, and interest in the patent at issue in this case.

2. On information and belief, Samsung is a limited liability company organized and existing under the laws of Delaware, having a principal place of business within this district at 1301 East Lookout Drive, Richardson, Texas 75082, has designated its registered agent for purposes of service of process as Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808, and is doing business in this judicial district and elsewhere in the United States.

3. On information and belief, Microsoft is a corporation organized and existing under the laws of Delaware, having a principal place of business located at One Microsoft Way, Redmond, Washington, 98052-7329, has designated its registered agent for purposes of service of process as Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701-3218, and is doing business in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

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

5. Subject-matter jurisdiction over Tune Hunter's claims is conferred upon this Court by 28 U.S.C. §§ 1331 and 1338(a).

6. On information and belief, each defendant has solicited business in the State of Texas, transacted business within the State of Texas and attempted to derive financial benefit from residents of the State of Texas, including benefits directly related to the instant patent infringement cause of action set forth herein.

7. Each defendant is subject to personal jurisdiction in Texas and this judicial district, and is doing business in this judicial district.

8. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b), (c), and (d) and 1400(b).

PATENT INFRINGEMENT

9. On September 6, 2005, U.S. Patent No. 6,941,275 ("the '275 patent"), entitled "Music Identification System," a copy of which is attached hereto as Exhibit A, was duly and legally issued to the inventor, Remi Swierczek. Tune Hunter is the owner by assignment of all right, title and

interest in and to the '275 patent, including the right to sue for and recover all past, present and future damages for infringement of the '275 patent.

10. The '275 patent is presumed valid.

11. Upon information and belief, each defendant, either alone or in conjunction with others, has in the past and/or continues to infringe and/or induce infringement of the '275 patent, in this judicial district and/or elsewhere in the United States, by making, using, selling, offering to sell and/or importing, and/or causing others to make, use, sell, offer to sell and/or import, and/or supplying or causing to be supplied in or from the United States, and/or importing into the United States, music identification systems, devices, products, and/or components thereof that relate to a music identification feature of at least one Microsoft operating system ("Accused Products") and embody, are made by and/or are covered by, or practice, in whole or in part, one or more of the claims of the '275 patent. Samsung is only charged with induced infringement.

12. Tune Hunter's right to relief for infringement of the '275 patent against Microsoft and Samsung is asserted with respect to and arises out of the same transaction, occurrence or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale or selling of the same above-identified Accused Products. More specifically, the alleged infringing activities in this action are limited to activities related to a music identification feature of at least one Microsoft operating system used to perform the process of identifying music according to claim 1 of the '275 patent and/or the method of purchasing a music item according to claim 2 of the '275 patent. Questions of fact common to infringement of the '275 patent by Microsoft and Samsung will arise in this action.

13. One of the benefits of the Accused Products is the ability of consumers to use the Accused Products to identify music that the consumer hears playing; and another benefit of the

Accused Products is the ability of consumers to use the Accused Products to purchase such music. The consumers' receipt of these benefits is conditioned upon their performance of one or more steps of the methods covered by claims 1 and/or 2 of the '275 patent; and the manner and timing of such performance is established by the Accused Products.

14. Each defendant has been and/or is now indirectly infringing one or more claims of the '275 patent in violation of 35 U.S.C. § 271(b) by inducing consumers to use the Accused Products to identify music and/or purchase an item of music in accordance with the steps of claims 1 and/or claim 2 of the '275 patent, thereby resulting in direct infringement of such claims. Each defendant has engaged in such inducement knowingly and, at least from the time of receipt of the original Complaint, has done so with knowledge that such activity encourages consumers to directly infringe the '275 patent.

15. Samsung has had actual notice and knowledge of the '275 patent since at least as early as May 14, 2009, and thus its alleged knowing activity has occurred since that time.

16. Consumers are instructed to use methods that infringe one or more claims of the '669 patent, including through instruction manuals provided with accused portable communication devices, and through on-line instructions and advertisements that explain how to use such devices to identify music and purchase music items in violation of claim 1 and/or claim 2 of the '275 patent.

17. On information and belief, the above-described acts of inducement have been carried out with the specific intent that such consumers will operate the portable communication devices in such a manner as alleged above, and knowing of such actions, which constitute infringement of one or more claims of the '275 patent.

18. Each defendant is liable for infringement of the '275 patent pursuant to 35 U.S.C. § 271.

19. Each defendant's acts of infringement have caused damage to Tune Hunter, and Tune Hunter is entitled to recover from each defendant the damages sustained by Tune Hunter as a result of each defendant's wrongful acts in an amount subject to proof at trial.

20. As a consequence of the infringement complained of herein, Tune Hunter has been irreparably damaged to an extent not yet determined and will continue to be irreparably damaged by such acts in the future unless each defendant is enjoined by this Court from committing further acts of infringement.

PRAYER FOR RELIEF

WHEREFORE, Tune Hunter prays for entry of judgment that:

- A.** Each defendant has infringed and/or induced infringement of the '275 patent;
- B.** Each defendant account for and pay to Tune Hunter all damages caused by its infringement of the '275 patent in accordance with 35 U.S.C. § 284;
- C.** Tune Hunter be granted permanent injunctive relief pursuant to 35 U.S.C. § 283 enjoining each defendant, its officers, agents, servants, employees and those persons in active concert or participation with them from further acts of patent infringement;
- D.** Tune Hunter be granted pre-judgment and post-judgment interest on the damages caused to it by reason of each defendant's patent infringement complained of herein;
- E.** Tune Hunter be awarded its costs and attorneys' fees; and,
- F.** Tune Hunter be granted such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Tune Hunter demands trial by jury on all claims and issues so triable.

Respectfully submitted,

Dated: October 27, 2015

By: /s/ Elizabeth L. DeRieux

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