

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

DDB Technologies L.L.C.,)	
)	
Plaintiff,)	Civil Action No. 10-475
)	
v.)	Judge: _____
)	
)	
PGA Tour, Inc.,)	JURY DEMANDED
)	
)	
Defendant.)	
)	

COMPLAINT FOR PATENT INFRINGEMENT AND DAMAGES

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff DDB Technologies, L.L.C., files this Complaint for Patent Infringement and Damages against Defendant PGA Tour, Inc., and would respectfully show the Court as follows:

THE PARTIES

1. Plaintiff DDB Technologies, L.L.C. ("DDB"), is a Texas limited liability company having its principal place of business at 107 Laura Lane, Austin, Texas 78746, which is within this judicial district.

2. Defendant PGA Tour, Inc. ("the PGA") is a Florida Corporation with, on information and belief, a principal place of business at 112 PGA Tour Blvd, Ponte Vedra Beach, FL 32082.

3. The PGA transacts business within the State of Texas and in this judicial district, and has committed acts of patent infringement as hereinafter set forth within the State of Texas and this judicial district. Such business includes, without limitation, the PGA's ownership and

operation of the internet website, <http://www.pgatour.com>, which is available to, accessed by, and subscribed to by users, customers, and potential customers of the PGA within this judicial district.

JURISDICTION AND VENUE

4. This is a civil action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has jurisdiction under 35 U.S.C. §§ 271, *et seq.*, and 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over the PGA pursuant to Tex. Civ. Prac. & Rem. Code § 17.041 *et seq.* Personal jurisdiction generally exists over the PGA because the PGA has minimum contacts with this forum as a result of business regularly conducted within the State of Texas and within this district, and, on information and belief, specifically as a result of, at least, committing the tort of patent infringement within Texas and this district. Personal jurisdiction also exists because, on information and belief, the PGA has entered into numerous contracts with customers in Texas for products and services offered by the PGA, which products and services include, among other things, the knowing and repeated transmission of computer files over the Internet. This Court's jurisdiction over the PGA comports with the constitutional standards of fair play and substantial justice and arises directly from the PGA's purposeful minimum contacts with the State of Texas.

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

7. The PGA has designated an agent for service in the State: Corp. Service Co. DBA CSC-Lawyers, 211 E. 7th Street, Suite 620, Austin, TX 78701-3218.

THE PATENTS-IN-SUIT

8. On June 11, 1996, United States Patent No. 5,526,479 (“the ‘479 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘479 Patent is attached hereto as Exhibit A.

9. On September 23, 1997, United States Patent No. 5,671,347 (“the ‘347 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘347 Patent is attached hereto as Exhibit B.

10. On March 20, 2001, United States Patent No. 6,204,862 (“the ‘862 Patent”), entitled “Method and Apparatus for Broadcasting Live Events to Another Location and Producing a Computer Simulation of the Events at that Location,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘862 Patent is attached hereto as Exhibit C.

11. On May 13, 2008, United States Patent No. 7,373,587 (“the ‘587 Patent”), entitled “Representing Sub-Events With Physical Exertion Actions,” was duly and legally issued by the United States Patent and Trademark Office to David R. Barstow and Daniel W. Barstow. A copy of the ‘587 Patent is attached hereto as Exhibit D.

12. The ‘479, ‘347, ‘862, and ‘587 Patents are referred to collectively hereinafter as “the DDB Patents.”

13. David R. Barstow and Daniel W. Barstow assigned the DDB Patents to DDB. DDB owns all right, title and interest in and to the DDB Patents.

FACTS

14. In the 1980s and continuing through the early 1990s, Dr. David R. Barstow, a Partner in and President of DDB, along with his brother, Daniel W. Barstow, a Partner in DDB, developed a method and apparatus for providing to remote viewers simulations of live sporting events including, for example, golf tournaments, etc. All of the technology required to produce such simulations is embodied in the DDB Patents.

15. Without DDB's permission, the PGA began providing simulation products/services over the Internet that embody the invention(s) set forth in the DDB patents. For example, the PGA's "Shot Tracker" product/service permits remote users to watch a simulation of live sporting events including, for example, golf tournaments. *See, e.g.*, Exhibit E.

16. The PGA has been and still is infringing the DDB Patents by making, selling, offering for sale, and using products and/or services embodying the invention(s) set forth in the DDB Patents including, without limitation, the PGA's "Shot Tracker" product/service available through the PGA's pgatour.com web site, and by inducing and/or contributing to the infringement of the DDB Patents by others.

COUNT I: INFRINGEMENT OF THE '479 PATENT

17. DDB repeats and realleges each of the allegations of paragraphs 1-16 as if set forth in full.

18. The PGA has infringed and continues to infringe the '479 Patent by making, selling, offering for sale, and using products and/or services covered by claims of the '479 Patent

(including, for example, the PGA's live game simulation product/service "Shot Tracker"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

19. The PGA has in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

20. The PGA's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

21. The PGA's actions have constituted and continue to constitute active inducement of and contributory infringement of the '479 patent.

22. On information and belief, the PGA's continued acts of infringement have been, and will continue to be, wanton and willful.

23. The PGA's infringing activities have damaged and continue to damage DDB. Upon information and belief, the PGA will continue to infringe the '479 Patent, causing irreparable harm to DDB unless enjoined by this Court.

COUNT II INFRINGEMENT OF THE '347 PATENT

24. DDB repeats and realleges each of the allegations of paragraphs 1-23 as if set forth in full.

25. The PGA has infringed and continues to infringe the '347 Patent by making, selling, offering for sale, and using products and/or services covered by claims of the '347 Patent, (including, for example, the PGA's live game simulation product/service "Shot Tracker"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

26. The PGA has in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

27. The PGA's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

28. The PGA's actions have constituted and continue to constitute active inducement of and contributory infringement of the '347 patent.

29. On information and belief, the PGA's continued acts of infringement have been, and will continue to be, wanton and willful.

30. The PGA's infringing activities have damaged and continue to damage DDB. Upon information and belief, the PGA will continue to infringe the '347 Patent, causing irreparable harm to DDB unless enjoined by this Court.

**COUNT III
INFRINGEMENT OF THE '862 PATENT**

31. DDB repeats and realleges each of the allegations of paragraphs 1-30 as if set forth in full.

32. The PGA has infringed and continues to infringe the '862 Patent by making, selling, offering for sale, and using products and/or services covered by claims of the '862 Patent (including, for example, the PGA's live game simulation product/service "Shot Tracker"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

33. The PGA has in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

34. The PGA's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

35. The PGA's actions have constituted and continue to constitute active inducement of and contributory infringement of the '862 patent.

36. On information and belief, the PGA's continued acts of infringement have been, and will continue to be, wanton and willful.

37. The PGA's infringing activities have damaged and continue to damage DDB. Upon information and belief, the PGA will continue to infringe the '862 Patent, causing irreparable harm to DDB unless enjoined by this Court.

**COUNT IV
INFRINGEMENT OF THE '587 PATENT**

38. DDB repeats and realleges each of the allegations of paragraphs 1-37 as if set forth in full.

39. The PGA has infringed and continues to infringe the '587 Patent by making, selling, offering for sale, and using products/services covered by claims of the '587 Patent, (including, for example, the PGA's live game simulation product/service "Shot Tracker"), without DDB's authorization in violation of 35 U.S.C. § 271(a).

40. The PGA has in the past and continues to promote and advertise its live game simulation products/services by providing links to its live game simulation products/services on its website. *See, e.g.*, Exhibit F.

41. The PGA's live game simulation products/services are not staple articles or commodities of commerce suitable for substantial non-infringing use.

42. The PGA's actions have constituted and continue to constitute active inducement of and contributory infringement of the '587 patent.

43. On information and belief, the PGA's continued acts of infringement have been, and will continue to be, wanton and willful.

44. The PGA's infringing activities have damaged and continue to damage DDB. Upon information and belief, the PGA will continue to infringe the '587 Patent, causing irreparable harm to DDB unless enjoined by this Court.

REQUEST FOR JURY TRIAL

45. Pursuant to FED. R. CIV. P. 38, DDB demands a trial by jury of any issue triable of right by a jury.

PRAYER FOR RELIEF

THEREFORE, plaintiff DDB prays for relief against the PGA as follows:

A. That the DDB Patents be adjudged infringed by the PGA and that the infringement be held to be willful;

B. That DDB be awarded compensatory damages for past infringement of the DDB Patents by the PGA in an amount no less than a reasonable royalty, in a sum to be determined at trial, and that said damages be trebled in view of the willful and deliberate nature of the infringement;

C. That the PGA, its officers, agents, servants, employees and attorneys, and other persons in active concert or participation with the PGA be preliminarily and permanently enjoined from further infringement of the DDB Patents;

D. That the PGA be ordered to deliver to DDB for destruction all infringing products and systems in its possession;

E. That this case be declared an exceptional case under 35 U.S.C. § 285 as to the PGA, and that DDB be awarded its attorneys' fees incurred in this action.

Respectfully Submitted,

June 28, 2010

By: /s/ James G. Ruiz

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