

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

VISUAL INTERACTIVE PHONE CON-
CEPTS, INC., a Nevada Corporation,

Plaintiff,

vs.

GOOGLE, INC., a Delaware Corporation,

Defendant.

Case No. 11-cv-12348

Hon. Lawrence P. Zatkoff

Mag. Laurie Michelson

MANTESE HONIGMAN ROSSMAN
and WILLIAMSON, P.C.

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**PLAINTIFF'S FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT AND JURY DEMAND**

Plaintiff VISUAL INTERACTIVE PHONE CONCEPTS, INC. (“VIPC”), by its attorneys Mantese Honigman Rossman and Williamson, P.C. and Kohn & Associates, PLLC, and for its First Amended Complaint against Defendant GOOGLE, INC. (“Google”), hereby alleges as follows:

THE PARTIES

1. Plaintiff VIPC is a corporation organized and existing under the laws of the State of Nevada, with a principal place of business at 1 President Street, Staten Island, New York, 10314.

2. VIPC is informed and believes, and thereon alleges, that Defendant, Google, is a Delaware Corporation with a principal place of business at 2400 Bayshore Parkway, Mountain View, CA, 94043.

3. VIPC owns certain patents that cover, among other things, (1) a system to enable and facilitate mobile transactions that includes a video-capable telephone and a data center that transmits, receives, and stores transaction information, and (2) a method for conducting mobile transactions using VIPC’s patented system.

4. Google is a technology company that makes, sells, and/or uses products and services including, *inter alia*, mobile communication devices and/or smartphones such as the Nexus One and the Nexus S handsets; an operating system (“Android”) for various mobile communication devices and/or smartphones; an “Android Market” where applications, digital books, digital music files and videos are available to be purchased and/or downloaded onto mobile communication devices and/or smartphones; software applications for use on mobile communication devices and/or smartphones; and a “Google Checkout”

service, owned and controlled by Google, to facilitate commercial transactions initiated through mobile communication devices and/or smartphones.

5. In conjunction with its provision of the above-referenced products and services, Google makes, sells, and uses, without license, certain technological processes and systems protected by patents owned by VIPC.

6. VIPC is informed and believes and thereon alleges that Google has committed the acts alleged herein within this Judicial District.

JURISDICTION

7. This is an action seeking relief with respect to infringement of a United States Patent under 35 U.S.C. §§ 271 and 281.

8. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Patent Laws of the United States, Title 35 of the United States Code.

9. This Court has personal jurisdiction over Google because it has committed and continues to commit acts of infringement in violation of 35 U.S.C. § 271, and places infringing products, processes and/or services into the stream of commerce with the knowledge or understanding that such products, processes and/or services are sold and/or employed in the State of Michigan, including in this District. The infringing acts of Google cause injury to VIPC within this District.

10. Upon information and belief, Google derives substantial revenue from the sale and/or employment of infringing products, processes and/or services within this District, expects its actions to have consequences within this District, and derives substantial revenue from infringing activities related to this District.

11. Venue is proper in the Judicial District under 28 U.S.C. §§ 1391 and 1400.

FACTUAL BACKGROUND

A. The Patents at Issue

12. On February 25, 1997, United States Patent No. 5,606,361 (“the ‘361 Patent”), titled “Videophone interactive mailbox facility system and method of processing information,” issued and was subsequently assigned to Plaintiff. At all relevant times, Plaintiff has been and remains the owner of all right, title, and interest in and to the ‘361 Patent. A copy of the ‘361 Patent is attached to the Complaint as Exhibit A.

13. On March 3, 1998, United States Patent No. 5,724,092 (“the ‘092 Patent”), titled “Videophone interactive mailbox facility system and method of processing information” issued and was subsequently assigned to Plaintiff. At all relevant times, Plaintiff has been and remains the owner of all rights, title, and interest in and to the ‘092 Patent. A copy of the ‘092 Patent is attached to the Complaint as Exhibit B.

B. Development of the Patents

14. In 1995, the world of electronic commerce was very different than it is today. Interactive network systems existed wherein a subscriber could buy products and/or services with the aid of a telephone and cable television system, but such network systems were mainly limited to the subscriber’s one-way input of data. The existing systems did not provide for the immediate confirmation of an order, were not portable and lightweight, and did not provide proper security for the transactions. (Ex A, ‘361 Patent, Col. 1, “Background of the Invention”).

15. John Davidsohn (“Davidsohn”), a systems developer who has designed and implemented improved trading and other computerized systems for large brokerage and

financial services firms, invented the system contained in the subject patents that allows the user to view products and services on a videophone, that is less expensive than a personal computer, and also more portable and user friendly than a personal computer.

16. A “videophone” as defined in the Patents includes “any device having the capabilities to receive video/voice and/or video/text as its primary function and which, in the future, may have additional capabilities added to it that will enable it to perform functions that a PC computer system performs today. Further, a videophone is defined to include cellular videophones or wireless videophones or all videophones integrated with additional PC technologies and similar capabilities (disk storage, CDs, diskettes, and memory in the megabyte range and up and/or keyboards).” (Ex B, ‘092 Patent, Col. 14-15).

17. “Videophone” encompasses basic phones that allow the user to purchase products such as ringtones and wallpaper, as well as today’s so-called smartphones.

18. Davidsohn’s system (the “interactive mailbox facility system” or “invention”) includes the use of a central data center for functions such as processing and dispensing information to and from purchasers and sellers, and allows for the use of improved security safeguards for network transactions.

19. Davidsohn and Anthony Cinotti (“Cinotti”) filed a patent application on the invention on May 10, 1995, application number 8/438,892 (“the initial application”). On February 25, 1997, the United States Patent and Trademark Office duly and legally issued the ‘361 Patent, as described above, naming Davidsohn and Cinotti as inventors.

20. On September 12, 1996, Davidsohn and Cinotti filed a continuation of the initial application, application number 8/713,007 (“the second application”). On March 3,

1998, the United States Patent and Trademark Office duly and legally issued the '092 Patent, naming Davidsohn and Cinotti as inventors.

21. Davidsohn and Cinotti assigned both the '361 Patent and the '092 Patent to VIPC.

C. The 2008 Reexamination Requests

22. During June and July 2008, anonymous reexamination requests were filed on both of VIPC's patents.

23. Following the United States Patent and Trademark Office's reexamination, the patents were reaffirmed, with only minor amendments to the claims.

24. On April 6, 2010, a reexamination certificate issued for the '361 Patent.

25. On May 11, 2010, a reexamination certificate issued for the '092 Patent.

26. VIPC is the sole owner of the patents and holds all rights to the patents, including the right to bring legal action against patent infringers.

CLAIM FOR RELIEF

Count I – Direct Infringement

27. Plaintiff realleges all preceding paragraphs herein.

28. VIPC is informed and believes, and thereon alleges, that Google infringes on VIPC's patents by making, using, and selling systems and methods that enable the completion of millions of commercial transactions with and by consumers that own video-capable wireless telephone handsets, which transactions are routed through Google data centers that collect and store transaction information.

29. For example, among other things, Google develops and supports a mobile operating system known as Android, which is designed, according to Google's specifica-

tions, to be installed on millions of video-capable wireless handsets produced by Google, as well as various other manufacturers, and distributed by Google and various wireless service providers throughout the United States and the world.

30. Consumers with video-capable wireless handsets running variants of the Android operating system may initiate transactions from such handsets to make purchases of goods from the Google Android Market, which transactions are routed through Google's data center and for which Google collects and stores certain transaction information. In order to employ certain features of handsets that use the Android operating system, handset owners are, upon information and belief, required to create an email account using Google's "Gmail" email system.

31. Google's Android Market sells various games and mobile handset applications, and also offers video content such as feature films for rent or purchase by Android Market customers.

32. In order to make purchases from the Android Market, customers are, upon information and belief, required to create a "Google Checkout" account, which entails the creation of a user profile and the entry of credit card or other payment information into Google's database. On information and belief, such information is encrypted for privacy and transaction authentication.

33. Whenever a customer purchases or rents a game, application, or video content through the Android Market, Google and/or Google Checkout are believed to retain a portion of the payment for such game, application, or video content, whether through a "transaction fee" charged to an application or game developer or pursuant to a contractual relationship with a video content creator, developer, provider or licensor.

34. At least since 2009, Google has jointly developed and/or overseen the development of several different video-capable wireless telephone handsets with capabilities similar to a PC computer, including, among others, the Nexus One handset and the Nexus S handset.

35. Both the Nexus One handset and the Nexus S handset are capable of accessing Google's Android Market and purchasing applications, games, and/or video content, among other things.

36. Millions of video-capable wireless telephone handsets manufactured by other entities are installed with Google's Android operating system and enable handset operators to engage in commercial transactions through Google's Android Market, using Google Checkout to purchase goods and services, which transactions are routed through Google's data center.

37. Upon information and belief, Google's agents, in the course and scope of their employment, operate or have operated Nexus One, Nexus S, and other Android and Android Market enabled video-capable telephone handsets in a manner, as described above, that interacts with Google's data center and uses a system that infringes VIPC's patents. Google is liable for the actions of its agents.

38. Accordingly, Google uses, makes, sells and benefits from, without license, technological systems, methods, and processes covered by the claims of the patents-in-suit.

39. Google committed these acts of infringement without license or other authorization from VIPC.

40. Google's infringement of the '361 Patent and the '092 Patent will continue unless enjoined by this Court.

41. As a direct and proximate result of Google's infringement of the '361 Patent and the '092 Patent, Plaintiff has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which Plaintiff VIPC is entitled to relief.

Count II – Indirect and Contributory Infringement

42. Plaintiff re-alleges all preceding paragraphs herein.

43. VIPC is informed and believes, and thereon alleges, that Google, through its agents, employees and servants, has knowingly, intentionally and willfully infringed the patents-in-suit by making, using, offering for sale, selling and/or importing products and/or services within this Judicial District covered by one or more claims of the '361 Patent and the '092 Patent.

44. Google maintains its own database of patents, which can be accessed through the internet at the uniform resource locator <http://www.google.com/patents>.

45. Both of the VIPC patents are contained in Google's patent database, which is believed to have been created by Google employees.

46. In light of the numerous technological patents that apply to and affect electronic commerce and wireless/cellular technology, any failure by Google to review related patents, including VIPC's patents, before making, using, and/or selling systems and methods that infringe on VIPC's patents would constitute deliberate action by Google to avoid confirming a high probability of wrongdoing.

47. Moreover, Google solicits and encourages handset manufacturers to distribute handsets pre-installed with Google's Android operating system for the purpose of enabling handset operators to conduct mobile transactions through Google's Android Market, using Google Checkout to complete such transactions.

48. Google advertises, markets, and encourages third parties to advertise and market Android and the Android Market.

49. Google makes available various instructions relating to development of products compatible with the Android Market, and the sale of such products through the Android Market.

50. The various Google products and services identified herein permit both Google and third parties to directly infringe VIPC's patents, constitute material parts of VIPC's patented systems, and enable the unauthorized use of VIPC's patented methods.

51. The combination of Google products and services described herein were created largely for the specific purpose of creating a commercial system and practicing methods of commerce that infringe on VIPC's patents.

52. Certain of those products and services, including the mobile Android Market, are not commercially usable in a non-infringing manner.

53. VIPC is informed and believes, and thereon alleges, that Google, through its agents, employees and servants has induced infringement and/or engaged in acts of contributory infringement.

54. Google committed these acts of infringement without license or other authorization from VIPC.

55. Google's infringement of the '361 Patent and the '092 Patent will continue unless enjoined by this Court.

56. As a direct and proximate result of Google's infringement of the '361 Patent and the '092 Patent, Plaintiff has suffered and will continue to suffer irreparable injury and damages in an amount not yet determined for which Plaintiff VIPC is entitled to relief.

REQUEST FOR RELIEF

WHEREFORE, VIPC prays for relief as follows:

A. That Google be adjudged to have infringed United States Patent No. 5,724,092 and Patent No. 5,606,361;

B. That Google be adjudged to have induced infringement of United States Patent No. 5,724,092 and Patent No. 5,606,361;

C. That Google be adjudged to have contributed to the infringement of United States Patent No. 5,724,092 and Patent No. 5,606,361;

D. That Google, its officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the Order, be permanently enjoined and restrained from infringing the United States Patent No. 5,724,092 and Patent No. 5,606,361;

E. That Google account for damages caused by the infringement of the United States Patent No. 5,724,092 and Patent No. 5,606,361;

F. That a judgment be entered against Google awarding VIPC all damages necessary to compensate VIPC pursuant to 35 U.S.C. § 284, and in no event less than a reasonable royalty, for infringement of the United States Patent No. 5,724,092 and Patent No. 5,606,361.

G. That the damages in this judgment be trebled pursuant to 35 U.S.C. § 284 for Google's knowing, intentional and willful infringement of United States Patent No. 5,724,092 and Patent No. 5,606,361. .

H. That VIPC be awarded all pre-judgment and post-judgment interest and costs in accordance with 35 U.S.C. § 284.

I. That this case be judged an “exceptional” case within the meaning of 35 U.S.C. § 285 and VIPC awarded its reasonable attorneys’ fees.

J. That VIPC receives such other and further relief as the Court may deem just, proper, and equitable under the circumstances.

DEMAND FOR JURY

Plaintiff respectfully demands a trial by jury on all claims and issues so triable.

Respectfully Submitted,

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