

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

EMG TECHNOLOGY, LLC,

Plaintiff,

v.

APPLE, INC.,  
AMERICAN AIRLINES, INC.,  
BLOOMBERG, L.P.,  
CONTINENTAL AIRLINES, INC.,  
UNITED PARCEL SERVICE, INC.,

Defendants.

Case No. 6:08-cv-447-LED

**JURY TRIAL DEMANDED**

**PLAINTIFF EMG TECHNOLOGY, LLC'S ~~FIRST~~ SECOND AMENDED PATENT  
RULE 3-1  
DISCLOSURE OF ASSERTED CLAIMS AND INFRINGEMENT CONTENTIONS**

Pursuant to the agreement of the parties, the Court's Order Granting Unopposed Motion for Leave to Amend Infringement Contentions dated ~~July 14~~ August, 2009, and Patent Rules 3-1 and 3-6(b) of the Rules of Practice for Patent Cases before the Eastern District of Texas, Plaintiff EMG Technology, LLC ("EMG") hereby serves its ~~First~~ Second Amended Patent Rule 3-1 Disclosure of Asserted Claims and Infringement Contentions ("Infringement Contentions"). EMG's Infringement Contentions are based upon information available to EMG as of the date hereof without the benefit of discovery in this litigation. Because EMG has not yet received documents, source code, deposition testimony or other discovery relevant to its Infringement Contentions from Defendants Apple, Inc. ("Apple"), American Airlines, Inc. ("AA"), Bloomberg, LP ("Bloomberg"), Continental Airlines, Inc. ("Continental"), or United Parcel Service, Inc. ("UPS")<sup>1</sup>, and because EMG's investigation is ongoing, EMG reserves the right to

<sup>1</sup> Apple, AA, Bloomberg, Continental, and UPS are referred to collectively herein as "Defendants".

supplement and/or modify its Infringement Contentions to the full extent permitted under Patent Rule 3-6 and this Court's Orders.

**I. Patent Rule 3-1(a) - Identification of Asserted Claims**

**A. Apple**

For purposes of Patent Rule 3-1(a), with respect to patents at issue, EMG asserts that Apple infringes the following patent claims directly, contributorily and/or by inducement: claims 1, 6, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, and 32 of U.S. Patent No. 7,020,845 ("845 Patent"); and claims 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 20, 21, 22, 25, 26, 27, 28, 29, 35, 36, 37, 40, 41, 43, 46, 50, 53, 54, 57, 58, 59, 60, 61, 66, 67, 68, 71, 72, and 73 of U.S. Patent No. 7,441,196 ("196 Patent").

**B. AA**

For purposes of Patent Rule 3-1(a), with respect to patents at issue, EMG asserts that AA infringes the following patent claims directly, contributorily and/or by inducement: claims 1, 3, 5, 6, 8, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, and 32 of the '845 Patent; and claims 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 20, 21, 22, 25, 26, 27, 28, 29, 35, 36, 37, 40, 41, 43, 46, 47, 48, 50, 53, 54, 57, 58, 59, 60, 61, 66, 67, 68, 71, 72, and 73 of the '196 Patent.

**C. Bloomberg**

For purposes of Patent Rule 3-1(a), with respect to patents at issue, EMG asserts that Bloomberg infringes the following patent claims directly, contributorily and/or by inducement: claims 1, 3, 5, 6, 8, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, and 30 of the '845 Patent; and claims 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 20, 25, 26, 27, 28, 29, 35, 40, 41, 43, 46, 50, 53, 54, 57, 58, 59, 60, 61, 66, 67, 68, and 71 of the '196 Patent.

#### **D. Continental**

For purposes of Patent Rule 3-1(a), with respect to patents at issue, EMG asserts that Continental infringes the following patent claims directly, contributorily and/or by inducement: claims 1, 3, 5, 6, 8, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, and 30 of the '845 Patent; and claims 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 20, 22, 25, 26, 27, 28, 29, 35, 37, 40, 41, 43, 46, 47, 48, 50, 53, 54, 57, 58, 59, 60, 61, 66, 67, 68, 71, and 73 of the '196 Patent.

#### **E. UPS**

For purposes of Patent Rule 3-1(a), with respect to patents at issue, EMG asserts that UPS infringes the following patent claims directly, contributorily and/or by inducement: claims 1, 3, 5, 6, 8, 10, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, and 30 of the '845 Patent; and claims 1, 2, 3, 4, 6, 9, 10, 11, 12, 13, 20, 22, 25, 26, 27, 28, 29, 35, 37, 40, 41, 43, 46, 48, 50, 53, 54, 57, 58, 59, 60, 61, 66, 67, 68, 71, and 73 of the '196 Patent.

The claims identified above are collectively referred to herein as the “Asserted Claims”.

#### **II. Patent Rule 3-1(b) - Identification of Accused Instrumentalities**

For purposes of Patent Rule 3-1(b), with respect to the patents at issue, EMG asserts that each of the Asserted Claims is infringed by the instrumentalities identified below (collectively referred to herein as the “Accused Instrumentalities”). EMG reserves the right to amend this identification to the full extent permitted under Patent Rule 3-6 and this Court’s Orders. Unless otherwise stated, EMG’s assertions of infringement apply to all editions, versions, and applications of the Accused Instrumentalities.

#### **A. Apple**

With respect to Apple, the Accused Instrumentalities are identified in Appendices A-B, E-F, and K-L.

**B. AA**

With respect to AA, the Accused Instrumentalities are identified in Appendices C-D.

**C. Bloomberg**

With respect to Bloomberg, the Accused Instrumentalities are identified in Appendices E-F.

**D. Continental**

With respect to Continental, the Accused Instrumentalities are identified in Appendices G-H.

**E. UPS**

With respect to UPS, the Accused Instrumentalities are identified in Appendices I-J.

**III. Patent Rule 3-1(c) - Claim Charts**

EMG's investigation and analysis of the Accused Instrumentalities is based upon information made publicly available by Defendants and EMG's own investigations. Attached as Appendix A is an amended claim chart regarding infringement of the '845 patent by Apple. Attached as Appendix K is a claim chart with additional examples regarding infringement of the '845 patent by Apple. Attached as Appendix B is an amended claim chart regarding infringement of the '196 patent by Apple. Attached as Appendix K is a claim chart regarding infringement of the '845 patent by — Attached as Appendix L is a claim chart with additional examples regarding infringement of the '196 patent by Apple. EMG hereby incorporates by reference from its Infringement Contentions served on June 5, 2009, Exhibits A-H to Appendix A, Exhibits A-S to Appendix B, and Appendices CB-J, including exhibits thereto. The charts appended and incorporated as Appendices A-J-L set forth EMG's current contentions with respect to where each element of the Asserted Claims is found in the Accused Instrumentalities.

All citations to evidence in EMG's Infringement Contentions are exemplary only and shall in no way limit EMG's reliance on additional evidence obtained in discovery in support of its Infringement Contentions. Some exhibits included in Appendices A-~~J~~L may have personally identifying information redacted. To the fullest extent permitted under Patent Rule 3-6 and this Court's Orders, EMG reserves the right to amend and/or supplement its Infringement Contentions for any of the following reasons:

(i) EMG's positions regarding infringement of specific claims will depend on how those claims are construed by the Court. Because claim construction has not yet occurred, EMG cannot take a final position on the bases for infringement of the Asserted Claims; and

(ii) While EMG's investigation and analysis of Defendants' infringement is based upon information made publicly available by Defendants and EMG's own investigations, additional discovery from Defendants is necessary before EMG can take final positions on the bases for infringement of the Asserted Claims.

**A. Apple**

Appended hereto as Appendices ~~A, E, and K~~, and incorporated herein in ~~its~~their entirety, ~~is~~are a preliminary chart identifying specifically where each element of the Asserted Claims of the '845 Patent is found in the Apple Accused Instrumentalities.

Appendices ~~B, F, and L~~, incorporated herein in ~~its~~their entirety, ~~is~~are a preliminary chart identifying specifically where each element of the Asserted Claims of the '196 Patent is found in the Apple Accused Instrumentalities.

**B. AA**

Appendix C, incorporated herein in its entirety, is a preliminary chart identifying specifically where each element of the Asserted Claims of the '845 Patent is found in the AA

Accused Instrumentalities. Appendix D, incorporated herein in its entirety, is a preliminary chart identifying specifically where each element of the Asserted Claims of the ‘196 Patent is found in the AA Accused Instrumentalities.

**C. Bloomberg**

Appendix E, incorporated herein in its entirety, is a preliminary chart identifying specifically where each element of the Asserted Claims of the ‘845 Patent is found in the Bloomberg Accused Instrumentalities. Appendix F, incorporated herein in its entirety, is a preliminary chart identifying specifically where each element of the Asserted Claims of the ‘196 Patent is found in the Bloomberg Accused Instrumentalities.

**D. Continental**

Appendix G, incorporated herein in its entirety, is a preliminary chart identifying specifically where each element of the Asserted Claims of the ‘845 Patent is found in the Continental Accused Instrumentalities. Appendix H, incorporated herein in its entirety, is a preliminary chart identifying specifically where each element of the Asserted Claims of the ‘196 Patent is found in the Continental Accused Instrumentalities.

**E. UPS**

Appendix I, incorporated herein in its entirety, is a preliminary chart identifying specifically where each element of the Asserted Claims of the ‘845 Patent is found in the UPS Accused Instrumentalities. Appendix J, incorporated herein in its entirety, is a preliminary chart identifying specifically where each element of the Asserted Claims of the ‘196 Patent is found in the UPS Accused Instrumentalities.

Unless otherwise indicated, the information provided that corresponds to each claim element is considered to indicate that each claim element is found within the product, device, process, method, function or act of the Accused Instrumentalities.

#### **IV. Patent Rule 3-1(d) - Literal Infringement/Doctrine of Equivalents**

For purposes of Patent Rule 3-1(d) with respect to the patents at issue, each element of each Asserted Claim is considered to be literally present and present under the Doctrine of Equivalents within each of the Accused Instrumentalities. To the fullest extent permitted under Patent Rule 3-6 and this Court's Orders, EMG reserves the right to amend and/or supplement this disclosure for any of the following reasons:

(i) EMG's positions regarding infringement of specific claims will depend on how those claims are construed by the Court. Because claim construction has not yet occurred, EMG cannot take a final position on the bases for infringement of the Asserted Claims under the Doctrine of Equivalents; and

(ii) While EMG's investigation and analysis of Defendants' products is based upon information made publicly available by Defendants and EMG's own investigations, additional discovery from Defendants is necessary before EMG can take final positions on the bases for infringement of the Asserted Claims under the Doctrine of Equivalents.

#### **V. Patent Rule 3-1(e) - Priority Dates**

The Asserted Claims of the '845 Patent are entitled to a priority date of November 15, 1999, as a continuation-in-part of U.S. Patent No. 6,600,497. The Asserted Claims of the '196 Patent are entitled to a priority date of November 15, 1999, as a continuation-in-part of U.S. Patent No. 6,600,497, and March 3, 2000, as continuation of the '845 Patent.

**VI. Patent Rule 3-1(f) - Identification of Instrumentalities Practicing the Claimed Invention**

EMG's MallTV portal incorporates or reflects each of the Asserted Claims.



DATED: ~~July~~ August \_\_, 2009

Respectfully submitted,

**OF COUNSEL:**

By: \_\_\_\_\_

Stanley M. Gibson  
(Cal. Bar No. 162329)  
Joshua S. Hodas, Ph.D.  
(Cal. Bar No. 250812)  
JEFFER, MANGELS, BUTLER AND  
MARMARO, LLP  
1900 Avenue of the Stars, Seventh Floor  
Los Angeles, CA 90067  
Telephone: (310) 203-8080  
Facsimile: (310) 203-0567  
E-mail: smg@jmbm.com  
E-mail: jsh@jmbm.com

Robert D. Becker  
(Cal. Bar No. 160648)  
Shawn G. Hansen  
(Cal. Bar No. 197033)  
MANATT, PHELPS & PHILLIPS, LLP  
1001 Page Mill Road, Building 2  
Palo Alto, CA 94304  
Telephone: (650) 812-1300  
Facsimile: (650) 213-0260  
E-mail: rbecker@manatt.com  
E-mail: shansen@manatt.com

Charles Ainsworth  
State Bar No. 00783521  
Robert Christopher Bunt  
State Bar No. 00787165  
PARKER, BUNT & AINSWORTH, P.C.  
100 E. Ferguson, Suite 1114  
Tyler, TX 75702  
903/531-3535  
903/533-9687  
E-mail: charley@pbatyler.com  
E-mail: rcbunt@pbatyler.com

*Attorneys for Plaintiff EMG Technology, LLC*