

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

FREYBURGER LLC,
a Delaware corporation,

Plaintiff

v.

Civil Action No. 09-C-104-C

MICROSOFT CORPORATION,
a Washington corporation,

Defendant.

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF
FOR PATENT INFRINGEMENT**

Plaintiff Freyburger LLC files this complaint against Defendant Microsoft Corp. (“Microsoft”) and alleges as follows:

NATURE OF THE ACTION AND JURISDICTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 101, *et seq.* This Court has subject matter jurisdiction over this patent infringement action under 28 U.S.C. §§ 1331, 1332, and 1338(a).

2. The Defendant, Microsoft, regularly conducts business in this judicial district and makes, offers to sell, has sold and/or continues to sell infringing products and practices infringing methods and/or has purposefully shipped products – which infringe or are used to infringe Plaintiff’s patent rights – to this judicial district through established distribution channels. In addition, Microsoft makes, uses, imports, sells and/or offers for sale operating

systems, and other products, that infringe or that are used in ways that infringe one or more claims of Plaintiff's patent in this district and elsewhere in the United States and induces others to engage in activities that constitute infringement with the intent to cause that infringement in this district and elsewhere in the United States. Therefore, the Defendant is subject to personal jurisdiction in this judicial district.

3. Venue is therefore proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b).

PARTIES

4. Plaintiff Freyburger LLC is a corporation organized and existing under the laws of the State of Delaware. Plaintiff is the owner of all right, title and interest in U.S. Patent No. 6,405,368 B1.

5. Defendant Microsoft is a corporation organized and existing under the laws of the State of Washington and has its principal place of business at One Microsoft Way, Redmond, WA 98052.

6. Defendant Microsoft designs and manufactures a variety of different types of computer software, including operating systems such as Windows XP, Windows Vista, and Windows Server, and software development tools such as Visual Studio, and database management tools such as SQL Server.

7. Defendant Microsoft sells its software through both its website, www.microsoft.com, and through numerous retailers throughout this district and the United States.

8. Defendant Microsoft offers for sale several products that contain the .Net Framework version 2.0 and higher. According to Microsoft's website, "Developers use .NET to build applications of many types: Web applications, server applications, smart client applications, console applications, database applications, and more."

THE PATENT-IN-SUIT: U.S. PATENT NO. 6,405,368 B1

9. On June 11, 2002, U.S. Patent No. 6,405,368 B1 (the "'368 Patent"), entitled "Method for Separate Compilation of Templates," was duly and legally issued to the inventor Brian Freyburger. A copy of the '368 Patent is attached as Exhibit A and is made a part of this Complaint.

10. The '368 Patent generally describes an improved method for compiling computer programs that contain templates. The improved method makes it possible for computer programs to be compiled faster and with greater efficiency.

11. Freyburger LLC owns all right, title and interest in, and has full rights to sue, enforce, and recover damages for all infringements of the '368 Patent.

CLAIMS FOR RELIEF AGAINST DEFENDANT MICROSOFT CORP.

12. FreyBurger LLC realleges and incorporates herein by reference the allegations stated in paragraphs 1-11 of this Complaint.

13. Microsoft has directly and/or indirectly¹ infringed one or more claims of the '368 patent, and Microsoft is continuing such infringement by practicing or causing others to practice one or more of the inventions claimed in the '368 patent. For example, Microsoft makes, uses, imports, sells and/or offers for sale operating systems, and other

¹ The references to indirect infringement herein include both contributory infringement and active inducement.

products that contain the .Net Framework, version 2.0 and higher, and that infringe or that are used in ways that infringe one or more claims of the '368 patent in this district and elsewhere in the United States and induces others to engage in activities that constitute infringement with the intent to cause that infringement in this district and elsewhere in the United States.

14. Freyburger LLC has suffered damages as a result of Microsoft's infringement and will continue to suffer damages as a result of Microsoft's infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- (a) that Microsoft has infringed, contributed to, and induced the infringement of the '368 patent;
- (b) that an injunction be issued against further infringement of the '368 patent by Microsoft and its officers, agents, servants, employees, attorneys and all persons in active concert or participation with them;
- (c) that Microsoft account and pay actual damages, but no less than a reasonable royalty, to Plaintiff to compensate for Microsoft's infringement of the '368 patent as provided by 35 U.S.C. § 284;
- (d) that Microsoft pay attorneys' fees, all costs of this action, and interest on those fees and costs to Plaintiff; and
- (e) that Plaintiff be granted such other and further relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38, Fed. R. Civ. P., Plaintiff demands a jury trial on all issues triable of right by a jury.

Dated this 2nd day of February, 2009.

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