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

COMPUFILL, LLC,
 	
                                 Plaintiff,
 	
     v.
 	
HEB GROCERY COMPANY, LP,
 	
                               Defendant.
	Case No. 2:13-CV-00106
	
	JURY TRIAL DEMANDED

<u>**COMPLAINT FOR PATENT INFRINGEMENT**</u>

This is an action for patent infringement in which CompuFill, LLC ("CompuFill" or "Plaintiff") makes the following allegations against HEB Grocery Company, LP ("HEB" or "Defendant").

PARTIES

1.   Plaintiff CompuFill is a California limited liability company with its principal place of business at 547 South Marengo Ave., Ste. 104, Pasadena, CA 91101.

2.   On information and belief, HEB is a Texas limited partnership with its principal place of business at 646 S. Main Ave., San Antonio, TX 78204. On information and belief, HEB may be served with process by serving its registered agent Abel Martinez at 646 S. Main Ave., San Antonio, TX 78204.

JURISDICTION AND VENUE

3.   This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

4. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, HEB has transacted business in this district, and has committed and/or induced acts of patent infringement in this district.

5. Further, on information and belief, HEB maintains documents and witnesses related to this action within the subpoena power of this Court. At least two HEB stores within this district, Corporate #48 at 3025 Dowlen Rd., Beaumont, TX 77706 and Corporate #589 at 4800 B Hwy. 365, Port Arthur, TX 77642, infringe as outlined under Count I, *infra*. See the screenshots for the store pages, which are true and correct copies of the webpages retrieved from http://www.heb.com/find-a-store/store-details.jsp?storeId=48&flag=true&flagnew=false and http://www.heb.com/find-a-store/store-details.jsp?storeId=589&flag=false&flagnew=false attached as Exhibits A and B, respectively.

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COUNT I
INFRINGEMENT OF U.S. PATENT NO. 6,728,684

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6. Plaintiff is the owner by assignment of United States Patent No. 6,728,684 ("the '684 Patent") entitled "On-Line Pharmacy Automated Refill System" – including all rights to recover for past and future acts of infringement. The '684 Patent was issued on April 27, 2004. A true and correct copy of the '684 Patent is attached as Exhibit C.

7. On information and belief, HEB has been and now is infringing the '684 Patent in this judicial district, and elsewhere in the United States. Acts of infringement by HEB include, without limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, at least an on-line pharmacy automated refill system. Such infringing systems include, for example, HEB's automated system for requesting prescription refills ("Accused System"). HEB is thus liable for infringement of the '684 Patent under 35 U.S.C. § 271.

8.   HEB infringes at least Claims 1 and 8 of the '684 Patent, by way of example only,

and without limitation on CompuFill's assertion of infringement by HEB of other claims of the

'684 Patent. Claim 1 of the '684 Patent reads as follows:

> 1. A method for processing requests for prescription refills between one or more
> client computers and a host computer, comprising the steps of: receiving a request
> for a prescription refill from a caller, said receiving of said request being
> facilitated by a client computer; storing said request until on-line communications
> with a host computer are established, said storing of said request being facilitated
> by a first client computer storage means; establishing a communication link
> between said client computer and said host computer, said establishing of said
> communication link being facilitated by a communication network; and
> processing said request between said client computer and said host computer, said
> processing of said request being facilitated first client computer code segment and
> a first host code segment.

Claim 8 of the '684 Patent reads as follows:

> 8. A computer program embodied on computer-readable medium having a
> computer readable program code embodied in said medium for effecting a method
> of processing requests for prescription refills between at least one client computer
> and a host computer, comprising: a code segment for receiving a request for a
> prescription refill from a caller; a code segment for storing said request until on-
> line communications with a host computer is established; a code segment for
> establishing a communication link between said client computer and said host
> computer; and a code segment for processing said request between said client
> computer and said host computer.

9.   The Accused System constitutes an "on-line pharmacy automated refill system,"

as made clear by HEB's Accused System's automated voice recording which recites[1] "if you

know your prescription number and are calling to request a refill through the automated system

press two." This indicates that HEB practices "a method for processing requests for prescription

refills between one or more client computers and a host computer" in addition to using "a

computer program embodied on computer-readable medium having a computer readable

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[1] HEB's Accused System uses the exact same automated voice recording for all systems checked, except a different
voice stated the address at the appropriate place. The Accused Systems investigated include Corporate #465 in
Austin, TX (512-478-8086), Corporate #48 in Beaumont, TX (409-860-4212) and Corporate #589 in Port Arthur,
TX (409-722-4066). All quotes from these systems were confirmed as of January 23, 2013.

program code embodied in said medium for effecting a method of processing requests for prescription refills between at least one client computer and a host computer."

10.   HEB practices the first step of Claim 1, "receiving a request for a prescription refill from a caller, said receiving of said request being facilitated by a client computer." HEB practices this step by directing callers to the Accused System to press two if   they are a pharmacy customer, as prompted by the automated voice recording. Following this, the automated voice recording directs the customer "if you know your prescription number and are calling to request a refill through the automated system press two." On information and belief the Accused System receives a request for a prescription refill from a caller due to the fact it is an automated call processing system. Further, on information and belief, said request is facilitated by a client computer as the Accused System requires a client computer to work as an automated call processing system. For the reasons explained above, HEB's Accused System also comprises the first element of Claim 8, "a code segment for receiving a request for a prescription refill from a caller."

11.   On information and belief, HEB practices the next step of Claim 1, "storing said request until on-line communications with a host computer are established, said storing of said request being facilitated by a first client computer storage means." By the nature of the Accused System as a client computer-enabled automated call processing system, it must store a request for a prescription refill at least temporarily.   After the request is stored, an on-line communication can be established with the host computer(s) which enable the prescription to be filled. For the reasons explained above, HEB's Accused System also comprises the next element of Claim 8, "a code segment for storing said request until on-line communications with a host computer is established."

12. On information and belief, HEB practices the next step of Claim 1, "establishing a communication link between said client computer and said host computer, said establishing of said communication link being facilitated by a communication network." By the nature of the Accused System as a client computer-enabled automated call processing system, it must establish a communication link with the host computer(s) and any other systems which enable the prescription to be filled. This communication link can be through any communication network which enables this communication. For the reasons explained above, HEB's Accused System also comprises the next element of Claim 8, "a code segment for establishing a communication link between said client computer and said host computer."

13. On information and belief, HEB practices the last step of Claim 1, "processing said request between said client computer and said host computer, said processing of said request being facilitated first client computer code segment and a first host code segment." Due to the nature of the client computer and host computer, they must enable and facilitate all processing and functions through code segments. Such code segments would be required to enable HEB to use the Accused System to allow its customers to receive prescription refills. For the reasons explained above, HEB's Accused System also comprises the last element of Claim 8, "a code segment for processing said request between said client computer and said host computer."

14. HEB's Accused System is a fully automated system which enables callers to order prescription refills without requiring any human interaction. After indicating to the Accused System that the caller is a pharmacy customer as indicated *supra*, the caller must actively select to speak to a staff member in order to speak to one. "If you know your prescription number and are calling to request a refill through the automated system press two. If you know your prescription number and are calling to check the status of your prescription order, press three.

For Pharmacy hours and information press four. To speak to a member of our Pharmacy staff press zero."

15.   As a result of HEB's infringement of the '684 Patent, CompuFill has suffered monetary damages and is entitled to a money judgment in an amount adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made by HEB of the invention, together with interest and costs as fixed by the court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment:

1. In favor of Plaintiff that Defendant has infringed the '684 Patent;

2. Requiring Defendant to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '684 Patent as provided under 35 U.S.C. § 284;

3. Finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and

4. Granting Plaintiff any and all other relief to which Plaintiff may show itself to be entitled.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right.

Dated: February 8, 2013   Respectfully submitted,

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