

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DIGIMEDIA HOLDINGS GROUP, LLC,

Plaintiff,

v.

ACCESS.1 COMMUNICATIONS CORP.

Defendant.

CIVIL ACTION NO. 2:13-cv-131

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff DigiMedia Holdings Group, LLC, by and through its attorneys, as and for its complaint against defendant Access.1 Communications alleges:

PARTIES

1. Plaintiff DigiMedia Holdings Group, LLC (“DigiMedia”) is a Delaware Limited Liability Company, headquartered at 427 Tatnall Street #61240, Wilmington, DE 19801.

2. On information and belief, defendant Access.1 Communications Corp. (“Access.1”) is a New York corporation, headquartered at 11 Penn Plaza, 16th Floor, New York, NY 10001-2006. On information and belief, Access.1 owns and operates radio stations in Texas and in this district, including KOOL (Sunny) 106.5, KKUS (The Ranch) 104.1, and KOYE (La Invasora) 96.7 in Tyler Texas within this district. Access.1 may be served through its registered agent Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, 211 E. 7th Street, Suite 620 Austin, TX 78701-3218.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. Accordingly, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. This Court has personal jurisdiction over the defendant because they regularly and systematically conduct and transact business within the State of Texas. Defendant's business includes, but is not necessarily limited to, owning and operating radio stations and offering for sale material or products, including advertising, to companies, individuals, and other entities located in the State of Texas.

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

PATENT INFRINGEMENT

6. On May 13, 1997, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 5,629,867 ("the '867 patent") entitled "Selection and Retrieval of Music from a Digital Database." On June 5, 2012, the United States Patent and Trademark Office duly and legally issued a Reexamination Certificate confirming the validity of claims 1-10 in original or amended form. A true and correct copy of the '867 patent and Reexamination Certificate is attached as Exhibit A.

7. On September 15, 1998, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 6,809,246 ("the '246 patent") entitled "Selection and Retrieval of Music from a Digital Database." On July 10, 2012, the United States Patent and Trademark Office duly and legally issued a Reexamination Certificate confirming the validity of claims 1-9, 12-13, 15-16, 20, 22, 23, 25, 26, and 28-29 in original or amended form. A true and correct copy of the '246 patent and Reexamination Certificate is attached as Exhibit B.

8. DigiMedia is the owner by assignment of all right, title, and interest in and to the '867 and '246 patents, with full and exclusive right to bring suit to enforce these patents, including the right to bring suit for past, present, and future infringement.

9. On information and belief, in violation of 35 U.S.C. § 271(a), defendant has been and now is directly infringing the '867 and '246 patents in the State of Texas literally or under the doctrine of equivalents, in this judicial district, and elsewhere in the United States by, among other things, using and/or operating radio station equipment that infringes the technological infrastructure disclosed and claimed by the '867 and '246 patents, without the authority of DigiMedia.

10. DigiMedia has repeatedly contacted Access.1 about its infringement of the '867 and '246 patents by letters dated May 4, 2011 and May 30, 2012, by email on at least October 20, 2011, and at other times by phone, in an attempt to resolve Access.1's infringement by offering to license the '867 and '246 patents. To date, Access.1 has neither taken a license to the '867 and '246 patents, nor provided adequate information detailing why no license is required.

11. On information and belief, DigiMedia has been harmed by defendant's infringement. Such harm will continue unless the defendant is enjoined by this Court from further infringement.

DEMAND FOR RELIEF

WHEREFORE, plaintiff DigiMedia requests entry of a judgment against the defendant, granting relief as follows:

A. Determining defendant to be liable to DigiMedia for patent infringement of the '867 and '246 patents;

B. Awarding DigiMedia damages adequate to compensate for the infringement;

C. If supported by the evidence, increasing the damages up to three times, under authority of 35 U.S.C. §284;

D. Permanently enjoining the defendant, its officers, agents, servants, employees, and attorneys, and those persons acting in concert or participation with each defendant, from further infringement of the '867 and '246 patents;

E. Determining that this is an exceptional case under 35 U.S.C. § 285 and awarding DigiMedia its reasonable attorney fees, costs, and expenses; and

F. Granting pre-judgment and post-judgment interest and such other and further relief as the Court may find just and equitable.

Dated: February 14, 2013

Respectfully Submitted,

By: /s/ William E. Davis, III
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