

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
CASE NO. 1:13-cv-41**

COMPUFILL, LLC,

Plaintiff,

v.

INGLES MARKETS, INCORPORATED,

Defendant.

**JURY TRIAL DEMANDED**

**COMPLAINT FOR PATENT INFRINGEMENT**

This is an action for patent infringement in which CompuFill, LLC (“CompuFill” or “Plaintiff”) makes the following allegations against Ingles Markets, Incorporated (“Ingles Markets” 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, Ingles Markets is a North Carolina corporation with its principal place of business at 2913 US Hwy. 70 W, Black Mountain, NC 28711. On information and belief, Ingles Markets may be served with process by serving its registered agent Arlene Eubank at 2913 US Hwy. 70 W, Black Mountain, NC 28711.

**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, Ingles Markets 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, Ingles Markets maintains documents and witnesses related to this action within the subpoena power of this Court. Ingles Markets indicates in its Contact Information page that its principal place of business is located in Black Mountain, NC. See the screenshot for Ingles Markets's Contact Information page retrieved from [http://www.ingles-markets.com/contact\\_info.php](http://www.ingles-markets.com/contact_info.php), a true and correct copy of which is attached hereto as Exhibit A.

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

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 issued on April 27, 2004. A true and correct copy of the '684 Patent is attached hereto as Exhibit B.

7. On information and belief, Ingles Markets has been and now is infringing the '684 Patent in this judicial district, and elsewhere in the United States through its use of at least an automated system for requesting prescription refills. Acts of infringement by Ingles Markets include, without limitation, utilizing methods for processing requests for prescription refills that include every step of at least one method claim of the '648 Patent within the United States ("Accused Methods"), and using within the United States at least one computer program for effecting such methods ("Accused Programs"), which is also covered by at least one claim of the '684 Patent. Such infringing Accused Methods and Accused Programs include, for example,

those used by Ingles Markets in the operation of its automated system for requesting prescription refills. Ingles Markets is thus liable for infringement of the '684 Patent under 35 U.S.C. § 271.

8. Ingles Markets 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 Ingles Markets 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. Ingles Markets practices through its Accused Methods at least "a method for processing requests for prescription refills between one or more client computers and a host computer." This is made clear by Ingles Markets' automated voice recording which recites "To refill a prescription press 1." (Ingles Markets' Accused Methods and Accused Programs use the exact same automated voice recording for all pharmacies investigated, except a different voice states the address at the appropriate place for each. The Accused Methods and Accused Programs investigated include those hosted at 828-255-8949 and 828-255-4612. All quotes were

confirmed as of February 5, 2013.) For the reasons explained above Ingles Markets' Accused Programs also comprise at least "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."

10. Ingles Markets practices through its Accused methods 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." Ingles Markets practices this step by directing callers to press one if they wish to refill a prescription, as prompted by the automated voice recording. Following this, the automated voice recording informs the customer "Giving us ample time to prepare your prescription order provides us with more time for your personalized service. Your prescription requested on this call will be ready for [day] after 1:30 P.M. If this will not satisfy your need press 0 now to make other arrangements with the pharmacy. Please enter your 7 digit prescription number followed by the pound sign." On information and belief the Accused Methods receive a request for a prescription refill from a caller due to the fact that they function as an automated call processing system. Further, on information and belief, said request is facilitated by a client computer as the Accused Methods require a client computer to function as an automated call processing system. For the reasons explained above, Ingles Markets' Accused Programs also comprise 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, Ingles Markets practices through its Accused Methods 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 Methods utilized in a client computer-enabled automated call processing system, Ingles Markets 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, Ingles Markets’ Accused Programs also comprise 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, Ingles Markets practices through its Accused Methods 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 Methods utilized in a client computer-enabled automated call processing system, Ingles Markets 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, Ingles Markets’ Accused Programs also comprise 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, Ingles Markets practices through its Accused Methods 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 utilizing the Accused Methods, they must enable and facilitate all processing and functions through code segments. Such code segments would be required to enable Ingles Markets to use the Accused Methods to allow its customers to receive prescription refills. For the reasons explained above,

Ingles Markets' Accused Programs also comprise the last element of Claim 8, "a code segment for processing said request between said client computer and said host computer."

14. Ingles Markets' Accused Methods and Accused Programs are utilized in its fully automated system which enables callers to order prescription refills without requiring any human interaction. The caller must actively select to speak to a pharmacy employee in order to speak to a human. "To speak to a pharmacy employee press 3" or "if this will not satisfy your need press 0 now to make other arrangements with the pharmacy." After making the selection, the caller is informed "transferring to the pharmacy" before transferring the call from the fully automated system utilizing the Accused Methods and Accused Programs.

15. As a result of Ingles Markets' 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 Ingles Markets 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; and
3. 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.

February 14, 2013

*/s/ Susan Freya Olive*

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Susan Freya Olive

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