

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

SMARTSOUND SOFTWARE, INC.,

Plaintiff,

v.

Case No. 3:11-cv-00709

AVID TECHNOLOGY, INC., and PINNACLE
SYSTEMS, INC.

Defendants.

COMPLAINT

Plaintiff SmartSound Software, Inc. (“SmartSound”) by its attorneys, Quarles & Brady, LLP, alleges its Complaint against Defendants Avid Technology, Inc. (“Avid”) and Pinnacle Systems, Inc. (“Pinnacle”) as follows:

NATURE OF THE ACTION

1. This action results from Defendants’ infringement of two of SmartSound’s patents. The technology at issue relates to a system used to create and coordinate sequences of audio and/or video segments so that the segments have a desired length, which corresponds to the user’s criteria. For example, this technology is helpful when editing a sound track for a movie sequence that is a set length.

THE PARTIES

2. Plaintiff SmartSound is a corporation organized under the laws of California with a place of business at 8550 Balboa Blvd, Suite 180, Northridge, California 91325.

3. Defendant Avid is a corporation organized under the laws of Delaware with its headquarters at 75 Network Drive, Burlington, Massachusetts 01803.

4. Defendant Pinnacle is a subsidiary of Avid.

5. Pinnacle maintains an office at 280 North Bernardo Avenue, Mountain View, California 94043.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338, with reference to the United States Patent Laws, Title 35 of the United States Code.

7. Defendant Avid maintains offices throughout North America, including an office in the Western District of Wisconsin located at 6400 Enterprise Lane, Suite 200, Madison, Wisconsin 53719.

8. Defendant Pinnacle operates an interactive website through which it sells products. The website is available throughout Wisconsin.

9. Upon information and belief, Pinnacle maintains a relationship with retail stores located throughout Wisconsin such as Best Buy, Target, Staples, and OfficeMax.

10. Upon information and belief, Pinnacle has sold product to Wisconsin residents.

11. This Court has personal jurisdiction over Avid under 28 U.S.C. § 1400 and Wis. Stat. § 801.05.

12. This Court has personal jurisdiction over Pinnacle under 28 U.S.C. § 1400 and Wis. Stat. § 801.05.

13. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

THE '445 PATENT

14. On March 2, 1999, U.S. Patent No. 5,877,445 entitled "System For Generating Prescribed Duration Audio And/Or Video Sequences" was duly and legally issued. A copy of the '445 Patent is attached as Exhibit A.

15. SmartSound is the owner by assignment of the entire right, title, and interest in the '445 Patent.

THE '902 PATENT.

16. On December 2, 1997, U.S. Patent No. 5,693,902 entitled "Audio Block Sequence Compiler for Generating Prescribed Duration Audio Sequences" was duly and legally issued. A copy of the '902 Patent is attached as Exhibit B.

17. SmartSound is the owner by assignment of the entire right, title, and interest in the '902 Patent.

RELATIONSHIP BETWEEN THE PARTIES

18. Defendants have previously licensed the technology at issue from SmartSound.

19. Before SmartSound filed this lawsuit, Defendants were aware of the '445 Patent.

20. Before SmartSound filed this lawsuit, Defendants were aware of the '902 Patent.

Count One

CLAIM FOR DIRECT INFRINGEMENT OF THE '445 PATENT

21. SmartSound realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 20.

22. Defendants Avid and Pinnacle have directly infringed one or more claims of the '445 Patent by making, using, selling, and offering for sale in the United States, or importing into the United States systems that infringe one or more of the claims of the '445 Patent.

23. Defendants have made, used, offered for sale, sold, or imported into the U.S. Scorefitter software.

24. Defendants' Scorefitter software when executed on a computer infringes claims 1 through 4, 6, 9, 11 through 17 and claim 20 of the '445 Patent.

25. Defendants' infringement has been intentional, willful, and in reckless disregard of SmartSound's rights.

26. Defendants have caused SmartSound substantial injury, including lost profits for which SmartSound is entitled to damages adequate to compensate it for the infringement.

27. Defendants' infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284 and an award of attorney fees pursuant to 35 U.S.C. § 285.

28. Defendants' infringement has also caused and continues to cause irreparable harm to SmartSound, entitling SmartSound to injunctive relief under 35 U.S.C. § 283.

Count Two
CLAIM FOR CONTRIBUTORY INFRINGEMENT OF THE '445 PATENT

29. SmartSound realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 28.

30. Defendants have made, sold, imported, or offered for sale in the U.S. Scorefitter software for use as part of a larger system.

31. Defendants specially made or specially adapted their Scorefitter software for use in a system that is within one or more claims of the '445 Patent.

32. Defendants' Scorefitter software when executed on a computer infringes claims 1 through 4, 6, 9, 11 through 17 and claim 20 of the '445 Patent.

33. Defendants knew that combining their Scorefitter software with other system components, for which their software was specially designed to be combined, would result in a combination of elements that infringes the '445 Patent.

34. Defendants' actions constitute contributory infringement under 35 U.S.C. § 271(c).

35. Defendants' contributory infringement has been intentional, willful, and in reckless disregard for the rights of SmartSound.

36. Defendants have caused SmartSound substantial injury, including lost profits, for which SmartSound is entitled to damages adequate to compensate it for Defendants' contributory infringement.

37. Defendants' contributory infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284 and an award of attorneys' fees pursuant to 35 U.S.C. § 285.

38. Defendants' infringement has also caused and continues to cause irreparable harm to SmartSound, entitling SmartSound to injunctive relief under 35 U.S.C. § 283.

Count Three
CLAIM FOR INDUCEMENT OF INFRINGEMENT OF THE '445 PATENT

39. SmartSound realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 38.

40. Defendants' Scorefitter software when executed on a computer infringes claims 1 through 4, 6, 9, 11 through 17 and claim 20 of the '445 Patent.

41. Defendants' product description and product information for the Scorefitter product instruct Scorefitter users to take action that will cause the infringement of the '445 Patent.

42. Through the information and instructions regarding the use of the Scorefitter product, Defendants have caused, urged, encouraged, and aided others to infringe the '445 Patent.

43. Defendants' actions constitute inducement of infringement of the '445 Patent under 35 U.S.C. § 271(b).

44. Defendants' inducement of infringement has been intentional, willful, and in reckless disregard for the rights of SmartSound.

45. Defendants have caused SmartSound substantial injury, including lost profits, for which SmartSound is entitled to damages adequate to compensate it for Defendants' inducement of infringement.

46. Defendants' inducement of infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorneys' fees pursuant to 35 U.S.C. § 285.

47. Defendants' infringement has also caused and continues to cause irreparable harm to SmartSound, entitling SmartSound to injunctive relief under 35 U.S.C. § 283.

Count Four
CLAIM FOR DIRECT INFRINGEMENT OF THE '902 PATENT

48. SmartSound realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 47.

49. Defendants Avid and Pinnacle have directly infringed one or more claims of the '902 Patent by making, using, selling, offering for sale in the United States, or importing into the United States systems that infringe one or more of the claims of the '902 Patent.

50. Defendants have made, used, offered for sale, sold, or imported into the U.S. Scorefitter software.

51. Defendants' Scorefitter software when used with a computer infringes claims 1 through 3, 5, 8 through 10, 12, and claims 15 through 21 of the '902 Patent.

52. Defendants' infringement has been intentional, willful, and in reckless disregard of SmartSound's rights.

53. Defendants have caused SmartSound substantial injury, including lost profits for which SmartSound is entitled to damages adequate to compensate it for the infringement.

54. Defendants' infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorney fees pursuant to 35 U.S.C. § 285.

55. Defendants' infringement has also caused and continues to cause irreparable harm to SmartSound, entitling SmartSound to injunctive relief under 35 U.S.C. § 283.

Count Five
CLAIM FOR CONTRIBUTORY INFRINGEMENT OF THE '902 PATENT

56. SmartSound realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 55.

57. Defendants have made, sold, imported, or offered for sale in the U.S. Scorefitter software for use as part of a larger system.

58. Defendants specially made or specially adapted their Scorefitter software for use in a system that is within one or more claims of the '902 Patent.

59. Defendants' Scorefitter software when used with a computer infringes claims 1 through 3, 5, 8 through 10, 12, and claims 15 through 21 of the '902 Patent.

60. Defendants knew that combining their Scorefitter software with other system components, for which their software was specially designed to be combined, would result in a combination of elements that infringes the '902 Patent.

61. Defendants' actions constitute contributory infringement under 35 U.S.C. § 271(c).

62. Defendants' contributory infringement has been intentional, willful, and in reckless disregard for the rights of SmartSound.

63. Defendants have caused SmartSound substantial injury, including lost profits, for which SmartSound is entitled to damages adequate to compensate it for Defendants' contributory infringement.

64. Defendants' contributory infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorneys' fees pursuant to 35 U.S.C. § 285.

65. Defendants' infringement has also caused and continue to cause irreparable harm to SmartSound, entitling SmartSound to injunctive relief under 35 U.S.C. § 283.

Count Six
CLAIM FOR INDUCEMENT OF INFRINGEMENT OF THE '902 PATENT

66. SmartSound realleges and incorporates by reference as if fully set forth herein the allegations contained in paragraphs 1 through 65.

67. Defendants' Scorefitter software when used with a computer infringes claims 1 through 3, 5, 8 through 10, 12, and claims 15 through 21 of the '902 Patent.

68. Defendants' product description and product information for the Scorefitter product instruct Scorefitter users to take action that will cause the infringement of the '902 Patent.

69. Through the information and instructions regarding the use of the Scorefitter product, Defendants have caused, urged, encouraged, and aided others to infringe the '902 Patent.

70. Defendants' actions constitute inducement of infringement of the '902 Patent under 35 U.S.C. § 271(b).

71. Defendants' inducement of infringement has been intentional, willful, and in reckless disregard for the rights of SmartSound.

72. Defendants have caused SmartSound substantial injury, including lost profits, for which SmartSound is entitled to damages adequate to compensate it for Defendants' inducement of infringement.

73. Defendants' inducement of infringement warrants the assessment of increased damages pursuant to 35 U.S.C. § 284, and an award of attorneys' fees pursuant to 35 U.S.C. § 285.

74. Defendants' infringement has also caused and continues to cause irreparable harm to SmartSound, entitling SmartSound to injunctive relief under 35 U.S.C. § 283.

REQUEST FOR RELIEF

WHEREFORE, SmartSound Software, Inc. respectfully requests judgment and relief against Avid Technology, Inc. and Pinnacle Technologies, Inc. as follows:

- A. A judgment that Avid and Pinnacle have infringed the '445 Patent;
- B. A judgment that Avid and Pinnacle have infringed the '902 Patent;
- C. Awarding SmartSound damages adequate to compensate it for the infringement of its patents and a preliminary and permanent injunction against Avid and Pinnacle from further infringement of the SmartSound's patents;
- D. Adjudicating that Avid's and Pinnacle's infringement was willful, and increasing Avid's and Pinnacle's liability for damages up to three times the amount found or assessed as compensatory damages;
- E. Declaring that this is an exceptional case under 35 U.S.C. § 285, and for an award of increased damages, attorneys fees, and costs;
- F. Awarding pre-judgment interest on any damage award; and

G. Granting such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

The Plaintiff hereby demands a trial by jury in this action on all claims and issues triable before a jury.

Dated this 17th day of October, 2011.

/s/ Johanna M. Wilbert
David R. Cross State Bar No. 1002866
Johanna M. Wilbert State Bar No. 1060853
Attorneys for Plaintiff
Quarles & Brady LLP
411 East Wisconsin Avenue, Suite 2040
Milwaukee, WI 53202
Telephone: 414-277-5495
Fax: 414-978-8669
E-mail: David.Cross@quarles.com
E-mail: Johanna.Wilbert@quarles.com