

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CLOUD SACHEL LLC

Plaintiff,

v.

KOBO, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Cloud Satchel LLC, by way of Complaint against Defendant Kobo, Inc., alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

THE PARTIES

2. Plaintiff Cloud Satchel is a limited liability company organized under the laws of the State of Delaware with its place of business at 1220 North Market Street, Suite 806, Wilmington, Delaware 19801.

3. Defendant Kobo, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business at 135 Liberty Street, Toronto, ON M6K 1A7. On information and belief, Kobo, Inc. is a wholly owned subsidiary of Rakuten, Inc.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338.

6. Kobo is subject to the jurisdiction of this Court by virtue of being incorporated in Delaware. On information and belief, Kobo is also subject to the jurisdiction of this Court by reason of its acts of patent infringement which have been committed in this Judicial District, and by virtue of its regularly conducted and systematic business contacts in this State. As such, Kobo has purposefully availed itself of the privilege of conducting business within this Judicial District; has established sufficient minimum contacts with this Judicial District such that it should reasonably and fairly anticipate being haled into court in this Judicial District; has purposefully directed activities at residents of this State; and at least a portion of the patent infringement claims alleged herein arise out of or are related to one or more of the foregoing activities.

7. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,862,321

8. The allegations set forth in the foregoing paragraphs 1 through 7 are hereby re-alleged and incorporated herein by reference.

9. On January 19, 1999, United States Patent No. 5,862,321, entitled “System and Method For Accessing And Distributing Electronic Documents,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’321 Patent is attached as Exhibit A to this Complaint.

10. Cloud Satchel is the assignee and owner of the entire right, title, and interest in and to the ’321 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement.

11. In violation of 35 U.S.C. § 271(a), Kobo has directly infringed, and continues to directly infringe, the ’321 Patent both literally and under the doctrine of equivalents. Kobo’s

infringement includes its making, testing, using, importing, selling, and offering to sell certain portable products that control the transport of electronic documents; its making, testing and using the web-based storage system (hereinafter “Accused Storage and Delivery System”) which functions with such portable products to store and deliver electronic documents; and its performing methods which involve such portable products and Accused Storage and Delivery System, that practice the subject matter recited in one or more claims of the ’321 Patent, including but not limited to claims 1, 15, and 19. Kobo’s infringing acts are performed in the United States, including within this Judicial District, without the authorization of Cloud Satchel. The accused portable products include Kobo’s line of eReaders and tablets (collectively “eReaders”) as they connect and operate with Kobo’s web based networked system, including its cloud storage and the means Kobo employs to store and produce documents from such cloud storage. The accused eReaders include the Kobo eReader, the Kobo Wi-Fi, the Kobo Touch, the Kobo Slick, the Kobo Vox, the Kobo Mini, the Kobo Glo, the Kobo Arc and the Kobo Aura HD, plus variations of these models. Kobo infringes by making, testing, and using the Accused Storage and Delivery System, and infringes by making, using, testing, importing, providing, selling, and offering to sell its eReaders. The infringing methods include the method of operating the eReaders, including how electronic document references are received and distributed in response to the functioning of the eReaders with respect to the Accused Storage and Delivery System, and how the eReaders achieve buying, restoring, lending, and borrowing of documents.

12. Cloud Satchel provided actual notice to Kobo of both its direct and indirect infringement of the ’321 Patent in a letter sent by Federal Express on June 26, 2013. In that letter, Cloud Satchel informed Kobo that it was infringing the ’321 Patent by making, testing, using, offering for sale, selling, and importing the Kobo line of eReader products (the “Accused

Instrumentalities”). Cloud Satchel’s letter further informed Kobo that the Accused Instrumentalities included, but were not limited to, the Kobo Touch, the Kobo Vox, the Kobo Slick, the Kobo Mini, the Kobo Glo, the Kobo Arc, the Kobo Aura, Kobo’s reader applications for smartphones and tablets, and Kobo’s websites where it offers for sale ebooks and other periodicals for use with its eReaders.

13. Cloud Satchel’s letter also informed Kobo that Kobo was inducing infringement of the ’321 Patent by actively aiding and abetting others to engage in, for example, the following actions that constituted direct infringement: (1) performing the steps of the method claims in connection with use of the Accused Instrumentalities; (2) using the Accused Instrumentalities; and, (3) combining components or devices to form the Accused Instrumentalities. Cloud Satchel’s letter informed Kobo that these other entities include, for example, Kobo’s partners, customers and end users of the Accused Instrumentalities. Cloud Satchel’s letter informed Kobo that it was actively inducing these other entities to engage in these actions by advertising, marketing, offering for sale and selling the Accused Instrumentalities, and by providing user manuals, product documentation, and otherwise providing special offers, incentives, and features to use the Accused Instrumentalities.

14. Cloud Satchel’s letter also informed Kobo that it was contributing to infringement of the ’321 Patent by providing the Accused Instrumentalities to others, including its partners, customers, and end users, because the Accused Instrumentalities constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the patent, and have no substantial non-infringing uses. In particular, the Accused Instrumentalities constitute a material part of the claimed invention at least because they contain the components that comprise a distributed system for accessing and distributing electronic documents using

electronic document references, as claimed in the '321 Patent. Further, the Accused Instrumentalities were made or especially adapted for use in an infringement of the '321 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to access and distribute electronic documents using electronic document references as claimed in the '321 Patent.

15. Kobo has had actual knowledge of the '321 Patent and of its direct and indirect infringement of that patent since at least the date that Defendant received the June 26, 2013 letter.

16. Upon information and belief, Kobo has induced and continues to induce others to infringe at least claims 1, 15, and 19 of the '321 Patent under 35 U.S.C. § 271(b) by, among other things and with specific intent or willful blindness, actively aiding and abetting others to infringe. These acts, include, but are not limited to, inducing Kobo's eReader customers, whose eReader use constitutes direct infringement of at least those claims of the '321 Patent. In particular, Kobo's actions include making, importing, offering to sell and selling the accused eReaders to its customers. Furthermore, Kobo's providing its User's Guides, training videos, instructions, and on-going help to its customers on how to use the eReaders, and otherwise inducing its customers via special offerings, incentives, and features, to use its eReaders to infringe at least claims 1, 15, and 19. On information and belief, Kobo has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement, because Kobo has had actual knowledge of the '321 Patent and that its acts were inducing its customers to infringe the '321 Patent since at least the date it received the June 26 notice letter.

17. Cloud Satchel has been harmed by Kobo's infringing activities.

18. Cloud Satchel notified Kobo of its direct and indirect infringement of the '321 Patent including an identification of the particular infringing products and features, but Kobo continued to infringe the '321 Patent by continuing the activities described in Paragraphs 11-16 above. On information and belief, Kobo has not obtained an opinion of counsel regarding infringement or validity with respect to the claims of the '321 Patent. Kobo's continued infringement has therefore been in reckless disregard of Cloud Satchel's patent rights. On information and belief, Kobo's infringement has been and continues to be willful.

COUNT II – INFRINGEMENT OF U.S. PATENT No. 6,144,997

19. The allegations set forth in the foregoing paragraphs 1 through 18 are hereby re-alleged and incorporated herein by reference.

20. On November 7, 2000, United States Patent No. 6,144,997, entitled "System and Method For Accessing And Distributing Electronic Documents," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '997 Patent is attached as Exhibit B to this Complaint.

21. Cloud Satchel is the assignee and owner of the entire right, title, and interest in and to the '997 Patent, including the right to assert all causes of action arising under said patent and the right to any remedies for infringement of it.

22. In violation of 35 U.S.C. § 271(a), Kobo has directly infringed and continues to directly infringe, both literally and under the doctrine of equivalents, the '997 Patent by making and using its Accused Storage and Delivery System. This infringement is facilitated by Kobo's making, testing, using, importing, selling, and offering to sell its eReaders to its customers, and by its customers' operating such eReaders. The Accused Storage and Delivery System is constructed in accordance with one or more claims of the '997 Patent, including but not limited

to claim 1. It is made and used in the United States, including within this Judicial District, without the authorization of Cloud Satchel.

23. Cloud Satchel provided actual notice to Kobo of its infringement of the '997 Patent in a letter sent by Federal Express on June 26, 2013. In that letter, Cloud Satchel informed Kobo that it was infringing the '997 Patent by making and using the Accused Storage and Delivery System which interfaced with and operated the eReaders. Cloud Satchel also informed Kobo that the making, testing, using, importing, selling, and offering to sell its eReaders furthered the infringement by the Accused Storage and Delivery System and increased Plaintiff's damages.

24. Kobo has had actual knowledge of the '997 Patent and its infringement of that patent since at least the date that Kobo received the June 26, 2013 letter.

25. Upon information and belief, Kobo has induced and continues to induce others to infringe at least claim 1 of the '997 Patent under 35 U.S.C. § 271(b) by, among other things and with specific intent or willful blindness, actively aiding and abetting others to infringe. These acts, include, but are not limited to, inducing Kobo's eReader customers, whose eReader use constitutes direct infringement of at least claim 1 of the '997 Patent. In particular, Kobo's actions include making, importing, offering to sell and selling the accused eReaders to its customers. Kobo's actions also include the provision of User's Guides, training videos, instructions, and on-going help to its customers on how to use the eReaders, and otherwise inducing its customers via special offerings, incentives, and features, to use its eReaders to infringe at least claim 1. On information and belief, Kobo has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement, because Kobo has had actual

knowledge of the '997 Patent and that its acts were inducing its customers to infringe the '997 Patent since at least the date it received the June 26, 2013 notice letter.

26. Cloud Satchel has been harmed by Kobo's infringing activities.

27. Cloud Satchel notified Kobo of its infringement of the '997 Patent including an identification of the particular infringing system and the facilitating products and features, but Defendant thereafter continued to infringe the '997 Patent by continuing the activities described in Paragraphs 22-25 above. On information and belief, Kobo has not obtained an opinion of counsel regarding infringement or validity with respect to the claims of '997 Patent. Kobo's continued infringement has therefore been in reckless disregard of Cloud Satchel's patent rights. On information and belief, Kobo's infringement has been and continues to be willful.

JURY DEMAND

Cloud Satchel demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Cloud Satchel respectfully requests that this Court enter judgment for Cloud Satchel and against Kobo as follows:

a. an adjudication that Kobo has infringed one or more claims of the '321 and '997 Patents;

b. an award of damages to be paid by Kobo adequate to compensate Cloud Satchel for Kobo's past infringement of any of the '321 and '997 Patent claims, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses, and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

- c. an injunction ordering Kobo to pay an ongoing royalty in an amount to be determined for any continued infringement after the date judgment is entered;
- d. an award of treble damages under 35 U.S.C. § 284;
- e. a declaration finding this to be an exceptional case, and awarding Cloud Satchel attorney fees under 35 U.S.C. §285; and,
- f. for such further relief at law and in equity as the Court deems just and proper.

Dated: November 12, 2013

STAMOULIS & WEINBLATT LLC

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