

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

14 CV 10149

Smart Skins LLC,

Plaintiff,

v.

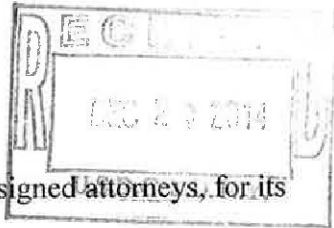
Microsoft Corporation,

Defendant.

Civil Action No. \_\_\_\_\_

**JURY TRIAL DEMANDED**

**COMPLAINT**



Plaintiff Smart Skins LLC (“Smart Skins”), by its undersigned attorneys, for its complaint against Defendant Microsoft Corporation (“Microsoft”), hereby alleges as follows:

**PARTIES**

1. Plaintiff Smart Skins LLC is a Delaware Limited Liability Company, having its principal place of business at 1450 Broadway, 40<sup>th</sup> Floor, New York, New York, 10018.

2. Defendant Microsoft, upon information and belief, is a Washington corporation, having at least one office located at 11 Times Square, New York, New York 10036. Microsoft, upon information and belief, advertises, markets, imports, offers to sell and sells mobile devices and accessories, including the exemplary devices accused of infringement herein, in this District and elsewhere in the United States.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States, United States Code, Title 35, § 1, et seq.

4. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

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

6. This Court has personal jurisdiction over Microsoft because Microsoft, among other things, conducts business in, and avails itself of the laws of, the State of New York. Upon information and belief, Microsoft's New York Technology Center is located at 11 Times Square, New York, New York 10036, where it leases nearly 200,000 square feet of office space. Further, upon information and belief, Microsoft facilitates interactive experiences at its New York Technology Center, offering demonstrations and discussion about its Surface line of products. Microsoft is registered to do business in New York and has appointed an agent for service of process in New York. Upon information and belief, Microsoft has continuous and systematic contacts with this District.

#### **PATENTS-IN-SUIT**

7. Smart Skins is the owner by assignment of all right, title, and interest in U.S. Patent No. 7,079,864 (the "'864 Patent") entitled "Adding Peripheral Devices To Mobile Devices Via Smart Interchangeable Cover." The '864 Patent was duly and legally issued by the U.S. Patent and Trademark Office on July 18, 2006, and is presumed valid. A copy of the '864 Patent is attached hereto as Exhibit 1.

8. Smart Skins is the owner by assignment of all right, title, and interest in U.S. Patent No. 6,920,338 (the "'338 Patent") entitled "Adding I/O Ports To Mobile Device Via Smart Interchangeable Cover." The '338 Patent was duly and legally issued by the U.S. Patent

and Trademark Office on July 19, 2005, and is presumed valid. A copy of the '338 Patent is attached hereto as Exhibit 2.

### **MICROSOFT'S INFRINGEMENT**

9. Microsoft's products include (but are not limited to) the Surface, Surface Pro, Surface 2, Surface Pro 2, Surface Pro 3, and Keyboard Cover(s) for each (collectively, the "Surface Products"), as well as the Lumia 2520 and Keyboard Cover(s) sold to work with it (together, the "Lumia Products").

10. Microsoft has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '864 Patent including at least claims 1 and 15 by making, using, offering to sell, selling (directly or through intermediaries), importing, licensing and/or supplying in this District and elsewhere in the United States products including but not limited to the Surface Products and Lumia Products.

11. Microsoft has infringed and continues to infringe, literally and/or under the doctrine of equivalents, one or more claims of the '338 Patent including at least claim 12 by making, using, offering to sell, selling (directly or through intermediaries), importing, licensing and/or supplying in this District and elsewhere in the United States products including but not limited to the Lumia Products.

12. Microsoft is, and has been, on notice of the '864 Patent and the '338 Patent since at least as early as September 28, 2012.

13. Upon information and belief, Microsoft continued to infringe claims of the '864 Patent and the '338 Patent despite an objectively high likelihood that its actions constituted infringement of these valid patents.

14. Microsoft's infringement of the '864 Patent and '338 Patent has, therefore, been willful.

15. Upon information and belief, Microsoft has also sold and provided and continues to sell and provide its products, including but not limited to the Surface Products and Lumia Products, directly and/or indirectly, to third parties, including but not limited to customers, users, distributors, and/or resellers (such as retailers) (collectively, "downstream parties").

16. Upon information and belief, the downstream parties directly infringe one or more claims of the '864 Patent including at least claims 1 and 15 by making, using, offering to sell, selling (directly or through intermediaries), importing, licensing and/or supplying in this District and elsewhere in the United States products including but not limited to the Surface Products and Lumia Products.

17. Upon information and belief, the downstream parties directly infringe one or more claims of the '338 Patent including at least claim 12 by making, using, offering to sell, selling (directly or through intermediaries), importing, licensing and/or supplying in this District and elsewhere in the United States products, including but not limited to the Lumia Products.

18. Upon information and belief, Microsoft has known that the acts by downstream parties of making, using, offering to sell, selling (directly or through intermediaries), importing, licensing and/or supplying Microsoft's the Surface Products and Lumia Products in this District and elsewhere in the United States directly infringe the '864 Patent and the '338 Patent as set forth above.

19. Upon information and belief, Microsoft has specifically intended to induce and contribute to, and has induced and contributed to, such direct infringement of the '864 Patent and the '338 Patent by downstream parties by making, using, offering to sell, selling (directly or

through intermediaries), importing, licensing and/or supplying in this District and elsewhere in the United States, its products, knowing that the use of these products causes others to infringe the claims of the '864 Patent and the '338 Patent. Microsoft has advertised and/or provided instructions for such products with the specific intent and encouragement that the downstream parties infringe the '864 Patent and the '338 Patent. For example, upon information and belief, Microsoft has provided downstream parties with instructions and/or user guides that encourage and direct downstream parties to configure the Surface, Surface 2, Surface Pro, Surface Pro 2, Surface Pro 3 and Lumia 2520 products with Microsoft's Keyboard Covers. Upon information and belief, Microsoft's Keyboard Covers are especially made for and used with its Surface, Surface Pro, Surface 2, Surface Pro 2, Surface Pro 3 and Lumia 2520 products, and such Keyboard Covers have no substantial non-infringing uses.

20. Microsoft's infringing actions were and are without authority, consent or license.

21. Smart Skins has suffered damages as a result of the direct and indirect infringement by Microsoft alleged above, and will continue to suffer such damages as long as such infringement continues.

**COUNT I: INFRINGEMENT OF U.S. PATENT NO. 7,079,864**

22. The allegations contained in paragraphs 1-21 above are repeated and realleged as if fully set forth herein.

23. Microsoft has been and continues to directly infringe and/or indirectly infringe, literally and/or under the doctrine of equivalents, claims of the '864 patent under 35 U.S.C. § 271, including at least claims 1 and 15.

24. Upon information and belief, Microsoft's infringement of the '864 patent has been willful.

25. Smart Skins has been damaged and continues to be damaged by Microsoft's infringement of the '864 patent.

**COUNT II: INFRINGEMENT OF U.S. PATENT NO. 6,920,338**

26. The allegations contained in paragraphs 1-25 above are repeated and realleged as if fully set forth herein.

27. Microsoft has been and continues to directly infringe and/or indirectly infringe, literally and/or under the doctrine of equivalents, claims of the '338 patent under 35 U.S.C. § 271, including at least claim 12.

28. Upon information and belief, Microsoft's infringement of the '338 patent has been willful.

29. Smart Skins has been damaged and continues to be damaged by Microsoft's infringement of the '338 patent.

**REQUEST FOR RELIEF**

WHEREFORE, Smart Skins respectfully requests that the Court enter a judgment:

A. Declaring that Microsoft has infringed U.S. Patent Nos. 7,079,864 and 6,920,338;

B. Awarding Smart Skins damages adequate to compensate for Microsoft's infringing activities, including supplemental damages for any post-verdict infringement up until entry of the final judgment with an accounting as needed, together with prejudgment and post-judgment interest on the damages awarded; all of these damages to be enhanced in an amount up to treble the amount of compensatory damages as justified under 35 U.S.C. § 284;

C. Declaring that this case is exceptional under 35 U.S.C. § 285 and awarding Smart Skins their reasonable costs and expenses of litigation, including attorneys' and experts' fees; and

D. Awarding Smart Skins such other and further relief as the Court may deem just and proper.

**JURY DEMAND**

Smart Skins hereby demands a trial by jury on all issues so triable.

Dated: *December 29, 2014*

Respectfully submitted,

**PROSKAUER ROSE LLP**



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\* Motion for admission *pro hac vice* forthcoming