

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TAILSTREAM TECHNOLOGIES, LLC

Plaintiff,

v.

TERARECON, INC.,

Defendant.

Civil Action No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, TailStream Technologies, LLC (“TailStream”), by and through its counsel, complains of Defendant, TeraRecon, Inc. (“TeraRecon”), as follows:

THE PARTIES

1. Tailstream is a limited liability company organized under the laws of the State of Delaware with a place of business at 19279 Canyon Park Drive, Villa Park, California 92861.

2. TeraRecon is a corporation organized under the laws of the State of Delaware with a place of business at 4000 East 3rd Avenue, Suite 200, Foster City, California 94404.

JURISDICTION AND VENUE

3. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has exclusive jurisdiction over the subject matter of this case under 28 U.S.C. §§ 1331 and 1338(a).

4. The Court has personal jurisdiction over TeraRecon because, among other things, TeraRecon is a Delaware corporation and regularly conducts business in Delaware and in this judicial district. For example and upon information and belief, TeraRecon has provided the Christiana Care Health System Department of Radiology in Newark, Delaware with software

solutions. Further, TeraRecon is specifically offering to sell, selling and/or advertising infringing software products through the Internet and other distribution channels in such a way as to reach customers in Delaware and this judicial district. TeraRecon has committed acts of infringement in this judicial district.

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

PATENTS-IN-SUIT

6. On June 5, 2012, the USPTO duly and legally issued U.S. Patent No. 8,195,937 (the “‘937 Patent”) titled “Remote Virtual Medical Diagnostic Imaging Viewer.” TailStream owns and has standing to sue for infringement of the ‘937 Patent. A copy of the ‘937 Patent is attached as Exhibit A.

7. On January 14, 2014, the USPTO duly and legally issued U.S. Patent No. 8,631,506 (the “‘506 Patent”) titled “Remote Data Viewer.” TailStream owns and has standing to sue for infringement of the ‘506 Patent. A copy of the ‘506 Patent is attached as Exhibit B.

8. On March 18, 2014, the USPTO duly and legally issued U.S. Patent No. 8,677,119 (the “‘119 Patent”) titled “Remote Data Viewer.” TailStream owns and has standing to sue for infringement of the ‘119 Patent. A copy of the ‘119 Patent is attached as Exhibit C.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 8,195,937

9. TailStream repeats and re-alleges the allegations in preceding paragraphs as though fully set forth herein.

10. TeraRecon has infringed and continues to infringe the ‘937 Patent through, among other activities, the manufacture, use, sale, importation and/or offer for sale of infringing remote medical viewer products, including but not limited to the iNtuition Enterprise Medical Viewer

(“iNtutionEMV”), the iEMV server, and medical viewer products with different names but with substantially similar functionalities as the iNtutionEMV products (collectively the “TeraRecon Accused Products”) throughout the United States, including within this judicial district and by aiding, assisting and encouraging the infringement of the ‘937 Patent by others.

11. TeraRecon has infringed and continues to infringe at least claims 1, 3, 4, 8, 9, 13, 15, 16, 17, 20, and 21-24 of the ‘937 Patent within the meaning of 35 U.S.C. § 271(a) through the foregoing activities including, without limitation, importing, offering for sale and selling the TeraRecon Accused Products in the United States. The TeraRecon Accused Products contain each and every element of at least claims 1, 3, 4, 8, 9, 13, 15, 16, 17, 20, and 21-24 of the ‘937 Patent both literally and under the doctrine of equivalents in contravention of 35 U.S.C. § 271.

12. TeraRecon has also indirectly infringed and continues to indirectly infringe at least claims 1, 3, 4, 8, 9, 13, 15, 16, 17, 20, and 21-24 of the ‘937 Patent under 35 U.S.C. § 271(b) by knowingly and actively inducing infringement of those claims. TeraRecon has knowingly and actively induced infringement of at least claims 1, 3, 4, 8, 9, 13, 15, 16, 17, 20, and 21-24, for example, through the foregoing activities including, without limitation, importing, offering to sell and selling the TeraRecon Accused Products in the United States, and by instructing, aiding, assisting and encouraging the offer for sale, sale and use of the TeraRecon Accused Products in a manner that infringes at least claims 1, 3, 4, 8, 9, 13, 15, 16, 17, 20, and 21-24 of the ‘937 Patent. The direct infringers that are being induced by TeraRecon include, without limitation, its retail customers, resellers and end-users that offer for sale, sell and use the TeraRecon Accused Products in the United States.

13. TeraRecon has also indirectly infringed and continues to indirectly infringe at least claims 1, 3, 4, 8, 9, 13, 15, 16, 17, 20, and 21-24 of the ‘937 Patent under 35 U.S.C. §

271(c) through the foregoing activities including, among other things, importing, offering for sale and selling the TeraRecon Accused Products and by instructing, aiding, assisting, authorizing, advertising, marketing, promoting, providing for and/or encouraging the offer for sale, sale and use of the TeraRecon Accused Products, which constitute a material part of the patented inventions of claims 1, 3, 4, 8, 9, 13, 15, 16, 17, 20, and 21-24 of the '937 Patent, which TeraRecon knows are especially made or adapted for use in an infringement of at least claims 1, 3, 4, 8, 9, 13, 15, 16, 17, 20, and 21-24 of the '937 Patent, and which are not a staple article of commerce suitable for substantial non-infringing use. The direct infringers for TeraRecon's contributory infringement under 35 U.S.C. § 271(c) include, without limitation, TeraRecon's retail customers, resellers and end-users that offer for sale, sell and use the TeraRecon Accused Products.

14. TeraRecon's infringement, contributory infringement and/or knowing and intentional inducement to infringe has injured TailStream and TailStream is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty, as permitted under 35 U.S.C. § 284.

15. TailStream has complied with 35 U.S.C. § 287 to the extent required by law.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 8,631,506

16. TailStream repeats and re-alleges the allegations in preceding paragraphs as though fully set forth herein.

17. TeraRecon has infringed and continues to infringe the '506 Patent through, among other activities, the manufacture, use, sale, importation and/or offer for sale of the TeraRecon Accused Products throughout the United States, including within this judicial district and by aiding, assisting and encouraging the infringement of the '506 Patent by others.

18. TeraRecon has infringed and continues to infringe at least claims 1-4, 12, 13, 16, 18, and 19 of the '506 Patent within the meaning of 35 U.S.C. § 271(a) through the foregoing activities including, without limitation, importing, offering for sale and selling the TeraRecon Accused Products in the United States. The TeraRecon Accused Products contain each and every element of at least claims 1-4, 12, 13, 16, 18, and 19 of the '506 Patent both literally and under the doctrine of equivalents in contravention of 35 U.S.C. § 271.

19. TeraRecon has also indirectly infringed and continues to indirectly infringe at least claims 1-4, 12, 13, 16, 18, and 19 of the '506 Patent under 35 U.S.C. § 271(b) by knowingly and actively inducing infringement of those claims. TeraRecon has knowingly and actively induced infringement of at least claims 1-4, 12, 13, 16, 18, and 19, for example, through the foregoing activities including, without limitation, importing, offering to sell and selling the TeraRecon Accused Products in the United States, and by instructing, aiding, assisting and encouraging the offer for sale, sale and use of the TeraRecon Accused Products in a manner that infringes at least claims 1-4, 12, 13, 16, 18, and 19 of the '506 Patent. The direct infringers that are being induced by TeraRecon include, without limitation, its retail customers, resellers and end-users that offer for sale, sell and use the TeraRecon Accused Products in the United States.

20. TeraRecon has also indirectly infringed and continues to indirectly infringe at least claims 1-4, 12, 13, 16, 18, and 19 of the '506 Patent under 35 U.S.C. § 271(c) through the foregoing activities including, among other things, importing, offering for sale and selling the TeraRecon Accused Products and by instructing, aiding, assisting, authorizing, advertising, marketing, promoting, providing for and/or encouraging the offer for sale, sale and use of the TeraRecon Accused Products, which constitute a material part of the patented inventions of claims 1-4, 12, 13, 16, 18, and 19 of the '506 Patent, which TeraRecon knows are especially

made or adapted for use in an infringement of at least claims 1-4, 12, 13, 16, 18, and 19 of the '506 Patent, and which are not a staple article of commerce suitable for substantial non-infringing use. The direct infringers for TeraRecon's contributory infringement under 35 U.S.C. § 271(c) include, without limitation, TeraRecon's retail customers, resellers and end-users that offer for sale, sell and use the TeraRecon Accused Products.

21. TeraRecon's infringement, contributory infringement and/or knowing and intentional inducement to infringe has injured TailStream and TailStream is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty, as permitted under 35 U.S.C. § 284.

22. TailStream has complied with 35 U.S.C. § 287 to the extent required by law.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 8,677,119

23. TailStream repeats and re-alleges the allegations in preceding paragraphs as though fully set forth herein.

24. TeraRecon has infringed and continues to infringe the '119 Patent through, among other activities, the manufacture, use, sale, importation and/or offer for sale of the TeraRecon Accused Products throughout the United States, including within this judicial district and by aiding, assisting and encouraging the infringement of the '119 Patent by others.

25. TeraRecon has infringed and continues to infringe at least claims 1-6, 9, 10, and 15-20 of the '119 Patent within the meaning of 35 U.S.C. § 271(a) through the foregoing activities including, without limitation, importing, offering for sale and selling the TeraRecon Accused Products in the United States. The TeraRecon Accused Products contain each and every element of at least claims 1-6, 9, 10, and 15-20 of the '119 Patent both literally and under the doctrine of equivalents in contravention of 35 U.S.C. § 271.

26. TeraRecon has also indirectly infringed and continues to indirectly infringe at least claims 1-6, 9, 10, and 15-20 of the '119 Patent under 35 U.S.C. § 271(b) by knowingly and actively inducing infringement of those claims. TeraReco has knowingly and actively induced infringement of at least claims 1-6, 9, 10, and 15-20, for example, through the foregoing activities including, without limitation, importing, offering to sell and selling the TeraRecon Accused Products in the United States, and by instructing, aiding, assisting and encouraging the offer for sale, sale and use of the TeraRecon Accused Products in a manner that infringes at least claims 1-6, 9, 10, and 15-20 of the '119 Patent. The direct infringers that are being induced by TeraRecon include, without limitation, its retail customers, resellers and end-users that offer for sale, sell and use the TeraRecon Accused Products in the United States.

27. TeraRecon has also indirectly infringed and continues to indirectly infringe at least claims 1-6, 9, 10, and 15-20 of the '119 Patent under 35 U.S.C. § 271(c) through the foregoing activities including, among other things, importing, offering for sale and selling the TeraRecon Accused Products and by instructing, aiding, assisting, authorizing, advertising, marketing, promoting, providing for and/or encouraging the offer for sale, sale and use of the TeraRecon Accused Products, which constitute a material part of the patented inventions of claims 1-6, 9, 10, and 15-20 of the '119 Patent, which TeraRecon knows are especially made or adapted for use in an infringement of at least claims 1-6, 9, 10, and 15-20 of the '119 Patent, and which are not a staple article of commerce suitable for substantial non-infringing use. The direct infringers for TeraRecon's contributory infringement under 35 U.S.C. § 271(c) include, without limitation, TeraRecon's retail customers, resellers and end-users that offer for sale, sell and use the TeraRecon Accused Products.

28. TeraRecon's infringement, contributory infringement and/or knowing and intentional inducement to infringe has injured TailStream and TailStream is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty, as permitted under 35 U.S.C. § 284.

29. TailStream has complied with 35 U.S.C. § 287 to the extent required by law.

30. TeraRecon's infringement, contributory infringement and/or inducement to infringe the '119 Patent has been willful, deliberate and objectively reckless.

31. TeraRecon's infringement of the '119 Patent has caused irreparable harm to TailStream, which has no adequate remedy at law, and will continue to injure TailStream unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further importation, manufacture, use, offer for sale and/or sale of products within the scope of the '119 Patent, and enjoining TeraRecon from contributing to and/or inducing infringement of the '119 Patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff TailStream respectfully asks this Court to enter judgment against TeraRecon, and against its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation with TeraRecon, granting the following relief:

A. The entry of judgment in favor of TailStream and against TeraRecon;

B. An award of damages adequate to compensate TailStream for the infringement that has occurred, and in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, together with prejudgment interest; and

C. Such other relief that TailStream is entitled to under law, and any other and further relief that this Court or a jury may deem just and proper.

Jury Demand

TailStream demands a trial by jury on all issues presented in this Complaint.

Dated: July 21, 2015

Respectfully submitted,

/s/ Kenneth L. Dorsney

Kenneth L. Dorsney (#3726)
MORRIS JAMES LLP
500 Delaware Avenue, Suite 1500
Wilmington, DE 19801
(302) 888-6800
kdorsney@morrisjames.com

Of Counsel:

Matthew G. McAndrews (*pro hac vice* pending)
Kyle D. Wallenberg (*pro hac vice* pending)
NIRO McANDREWS, LLC
200 West Madison Street, Suite 2040
Chicago, IL 60606
(312) 755-8575
mmcandrews@niro-mcandrews.com
kwallenberg@niro-mcandrews.com

*Attorneys for Plaintiff,
TailStream Technologies, LLC*