

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

E-NUMERATE SOLUTIONS, INC. and
E-NUMERATE, LLC,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,
Defendant.

Civil Action No.: 19-859-RTH

[PROPOSED] THIRD AMENDED COMPLAINT

Plaintiffs e-Numerate Solutions, Inc. (“ESI”) and e-Numerate, LLC (together, the “Plaintiffs”), bring this action for reasonable and entire compensation for the United States Government’s infringement of eight patents owned by ESI. In support of this action, Plaintiffs aver as follows:

THE PARTIES

1. Plaintiff ESI is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located in Great Falls, VA.
2. Plaintiff e-Numerate, LLC is a limited liability corporation organized and existing under the laws of Delaware with its principal place of business located in Reston, VA.
3. ESI is the owner of record and assignee of United States Patents 7,650,355 (“the ‘355 patent”); 8,185,816 (“the ‘816 patent”); 9,262,383 (“the ‘383 patent”); 9,262,384 (“the ‘384 patent”); 9,268,748 (“the ‘748 patent”); 9,600,842 (“the ‘842 patent”); and 10,223,337 (“the ‘337 patent”); (collectively, “the Asserted Patents”).
4. Plaintiff e-Numerate, LLC is the exclusive licensee of the Asserted Patents and has the exclusive right to pursue this lawsuit based on infringement of the Asserted Patents.

5. Defendant is the United States of America, acting through its various agencies including, but not limited to, the Securities and Exchange Commission (“SEC”), the Federal Deposit Insurance Corporation (“FDIC”), the Federal Financial Institutions Examining Council (“FFIEC”), the United States Department of the Treasury (“USDOT”), the Office of Management and Budget (“OMB”), the Federal Energy Regulatory Commission (“FERC”) and the United States Department of Energy (“DOE”).

JURISDICTION AND VENUE

6. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 271, *et seq.*

7. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1491 and 1498(a).

PRIOR LITIGATION INVOLVING THE ‘355, ‘816, ‘383 AND ‘748 PATENTS

8. On July 11, 2017, Plaintiffs filed a lawsuit in the United States District Court for the District of Delaware against Mattress Firm Holding Corp. (“Mattress Firm”). Plaintiffs alleged infringement of the ‘355, ‘816, ‘383 and ‘748 patents. The case was assigned Civil Action No. 17-933-RGA (“the 933 action”).

9. On September 18, 2017, Plaintiffs amended the Complaint in the 933 action to add Merrill Communications LLC (“Merrill Communications”) and Merrill Corporation (“Merrill Corp.”) (collectively “Merrill”) as defendants.

10. On October 19, 2018, the United States of America filed a “Statement of Interest” in the 933 action. The Statement of Interest provided:

Accordingly, by this Statement of Interest, the United States hereby confirms that the United States has granted its authorization and consent to the extent the Defendants use XBRL to file documents with the SEC pursuant to federal regulation.

Id. at 3. A true and correct copy of the Statement of Interest is attached hereto as Exhibit A.

11. By virtue of the Statement of Interest, the United States has assumed all liability for patent infringement by all companies that use XBRL to file documents with the SEC, FDIC/FFIEC, and FERC/DOE pursuant to federal regulation.

12. By virtue of the Statement of Interest, the United States has assumed all liability for patent infringement by third-party vendors such as Merrill Corp. that use, sell, license, provide third party services and/or host software used to assist companies that file documents using XBRL with the SEC.

13. By virtue of the Statement of Interest, the United States has assumed all liability for patent infringement by third-party vendors that use, sell, license, provide third party services and/or host software used to assist companies that file documents using XBRL with the FDIC/FFIEC and FERC/DOE.

BACKGROUND OF THE TECHNOLOGY

14. Inventor Russell T. Davis pioneered several inventions related to Reusable Data Markup Language including, but not limited to, the Asserted Patents. As discussed below, these patents provided numerous advantages over prior art Markup Languages.

15. In the late 1990s when numbers were treated the same as letters (text) in software programs, both online and offline, e-Numerate's key technical advancements allowed numbers to be substantively treated as the numerical values they represent. This opened the computer world, both online and offline, to vastly improve a user's ability to identify, manipulate, compare, convert and process numbers in software like never before. The technical innovations of the patents-in-suit are embodied in software that improves and enhances the functionalities of

computer systems over the prior art. The problem that they solve relates to the need for the intelligent identification and processing of numerical information on the Internet.

16. THE PROBLEM: In the late 1990s, the Internet was replete with numerical data but (i) there was no way of distinguishing this numerical data from text, (ii) data and analytic routines were not standardized, and (iii) calculations occurred at too low a conceptual level.

a. The advances of the inventions claimed in the patents-in-suit relate to deficiencies in the prior-art markup languages that existed at the time of the invention. These were Hyper Text Markup Language (HTML) and Extensible Markup Language (XML).

b. Internet browsers interpret and display documents formatted in HTML. In order to distinguish the text characters to be displayed from the information describing how the text characters are to be formatted, “annotations” that are not visible to the viewer of the displayed document are added to the document. The HTML specification describes the use of a markup language to include these non-displayed annotations. A markup language is a system for inserting information about the formatting and display of a group of text characters by placing non-displayed “markup” text before and after the group of text characters. These markups, commonly known as “tags” in online and other documents in digital format, describe the structure and formatting of digital documents and instruct computer systems on how to display them.

c. HTML works only with text and images. Numbers in HTML documents are read and displayed as text characters. There is no HTML tag capable of annotating the context or meaning of numerical data appearing in a markup document for computer systems to interpret these numerical data as numbers representing a particular type of information instead of a simple string of text characters. At most, HTML tags can be used only to indicate the display format

(e.g., font, size, color, alignment) of numerical data. For example, a financial statement showing numbers could be displayed by computer systems running browsers, but HTML cannot be used to annotate a given number as “revenue” or “expense,” or as “dollars” or “Euros,” or as representing “thousands” or “millions,” but rather only as a text character to be displayed in a certain way according to embedded formatting tags. Consequently, computer systems running web browsers could use HTML tags to display documents containing numbers, but the HTML tags do not enable computer systems to run analytical applications that read, manipulate, combine, compare, transform or analyze the numbers, load them into a spreadsheet, or display them in a graph, directly from multiple online sources.

d. XML version 1.0 was developed in the mid-to-late 1990s to help overcome some of HTML’s limitations. XML, itself, does not include a set of pre-defined tags, but rather is a specification that governs the creation of tags by particular users or groups. The XML specification allows developers to create customized tags that, via a glossary of terms, describe the structure and meaning of online content. In other words, XML allows developers to create their own individual markup languages. Thus, a user can use XML to create their own markup tags that annotate data characteristics that are meaningful to that particular user. But at the time of the inventions of the patents-in-suit, no set of XML tags had been promulgated for general use, so any XML tag taxonomy created by one user would not be compatible with the taxonomies created by other users. One user’s XML tag taxonomy, whether individuals or groups, is not ordinarily available to any other users or groups of users. XML’s lack of standardization, and its separation of data from its annotations (metadata), left users with no way to manipulate, combine, compare, transform or analyze numerical data from singular or multiple

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