

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

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

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

No. 19-859 C

Judge Lydia Kay Griggsby

**DEFENDANT UNITED STATES OF AMERICA'S
MOTION TO DISMISS UNDER RULE 12(b)(6)**

APPENDIX

E-Numerate Solutions, Inc. et al v. Mattress Firm Holding Corp., et al.,
1:17-cv-00933-RGA (D. Del) (“Delaware Case”), ECF 31 (without attachments)A1

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Delaware Case, ECF 30A99

Appl. No. 10/052,250 Terminal Disclaimer (Oct. 12, 2016).....A100

Appl. No. 09/573,780 Office Action (Dec. 28, 2005)A102

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Appl. No. 09/573,780 Reply to Office Action (Aug. 30, 2006)A132

Appl. No. 12/222,752 Reply to Office Action (Nov. 7, 2011)A153

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

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

Plaintiffs,

v.

MATTRESS FIRM HOLDING CORP.,
MERRILL COMMUNICATIONS LLC, AND
MERRILL CORPORATION,

Defendants.

Civil Action No.: 17-933-RGA

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT

Plaintiffs, e-Numerate Solutions, Inc. (“ESI”) and e-Numerate, LLC, bring this action against Defendants Mattress Firm Holding Corp. (“Mattress Firm”), Merrill Communications LLC, (“Merrill Communications”) and Merrill Corporation and allege the following:

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”); and 9,268,748 (“the ‘748 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 Mattress Firm is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 5815 Gulf Freeway, Houston, TX 77023. Mattress Firm's agent for service of process is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801.

6. Defendant Merrill Communications is a Delaware limited liability company with its principal place of business at One Merrill Circle, St. Paul, MN 55108. Merrill Communications' agent for service of process is Corporation Service Company, 251 Little Falls Dr., Wilmington, DE 19808

7. Defendant Merrill Corporation is a corporation organized and existing under the laws of Minnesota with its principal place of business at 1 Merrill Circle, St Paul, MN 55108.

JURISDICTION AND VENUE

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

9. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

10. This Court has personal jurisdiction over Defendant Mattress Firm since Defendant Mattress Firm is a Delaware corporation and Defendant Mattress Firm has regularly transacted business in this judicial district, directly or through intermediaries including various Mattress Firm subsidiaries. On information and belief, Defendant Mattress Firm or its subsidiaries operate multiple retail outlets within Delaware.

11. This Court has personal jurisdiction over Defendant Merrill Communications since Defendant Merrill Communications is a Delaware Limited Liability Company and, upon information and belief, has regularly transacted business in this district.

12. Upon information and belief, this Court has personal jurisdiction over Defendant Merrill Corporation since Merrill Corporation has regularly transacted business in this judicial district directly or through intermediaries including Merrill Communications. Upon information and belief, Merrill Corporation maintains a work-from-home program that includes employees located in this jurisdiction. A listing of the various work from home locations for Merrill Corporation is shown in Exhibit A which can be found on the world wide web at:

<https://hrx.talx.com/Files/Division143/Merrill%20Corporation%20List%20of%20Locations.pdf>

13. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(c) and (d), and 1400(b). Defendant Mattress Firm resides in Delaware since it is a Delaware Corporation. Defendant Merrill Communications resides in Delaware since it is a Delaware LLC. Upon information and belief, venue is appropriate as to Defendant Merrill Corporation because it has committed acts of infringement in this district either directly or through its subsidiaries including Defendant Merrill Communications. Upon further information and belief, Defendant Merrill Corporation has a regular and established place of business in this district including via its work-from-home locations in Delaware.

14. Joinder of Mattress Firm, Merrill Communications and Merrill Corporation is appropriate under 35 U.S.C. § 299 because the claims herein relate to same transaction, occurrence, or series of transactions or occurrences relating to the making, using, importing into the United States, offering for sale, or selling of the same accused product or process; and questions of fact common to all defendants or counterclaim defendants will arise in the action. The Defendants in this action are in a supplier-customer relationship.

BACKGROUND OF THE TECHNOLOGY

15. 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.

16. In the late 1990's 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.

17. THE PROBLEM: In the late 1990's, 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,

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