

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

**B.E. TECHNOLOGY, L.L.C.,** )

**Plaintiff,** )

v. )

**MICROSOFT CORPORATION,** )

**Defendant.** )

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**Case No. 2:12-cv-2829 JPM-tmp**

**JURY DEMAND**

**INITIAL INFRINGEMENT CONTENTIONS AND DOCUMENT PRODUCTION  
ACCOMPANYING INITIAL INFRINGEMENT CONTENTIONS**

Plaintiff B.E. Technology, L.L.C. (“Plaintiff” or “B.E.”) hereby submits to Defendant Microsoft Corporation (“Defendant” or “Microsoft”) its Initial Infringement Contentions and Document Production Accompanying Initial Infringement Contentions pursuant to Local Patent Rules 3.1 and 3.2.

Plaintiff makes these contentions based upon information reasonably available to it as of this date. Plaintiff has not completed its preparation of this matter for trial and discovery has not yet begun. Because Plaintiff’s investigations are ongoing and discovery is not yet complete, Plaintiff reserves the right to amend, modify, supplement, or narrow any portion of its asserted claims and infringement contentions, including, but not limited to, the identification of the claims infringed by Defendant and of the products and/or services accused of infringement. In particular, B.E. reserves the right to supplement its contentions as necessary and in accordance with this Court’s Local Rules in light of Defendant’s future document production, interrogatory answers, admissions, disclosures, fact witness testimony expert witness evidence, additional discovery, future rulings from the Court, any amendments to the pleadings, any additional items

of evidence, and/or for any other reason authorized by statute, rule, or applicable case law. B.E. similarly reserves the right to supplement its Initial Infringement Contentions to assert infringement of claims currently not addressed. B.E. further reserves the right to supplement its Initial Infringement Contentions and the associated infringement claim charts after Defendant identifies which claim elements it contends are not present in Defendant's products and/or services, and the bases for any such contentions.

**I. L.P.R 3.1: INITIAL INFRINGEMENT CONTENTIONS.**

**A. Identification Of Asserted Claims.**

Based on the information presently known and reasonably available to Plaintiff, Plaintiff identifies Claims 11, 12, 13, 15, 18, and 20 of U.S. Pat. No. 6,628,314 ("the '314 patent"); and Claims 2-3 of U.S. Pat. No. 6,771,290 ("the '290 Patent") to be the Asserted Claims. These contentions of Asserted Claims are, at this stage in the proceedings, necessarily limited in the sense that Plaintiff has had limited access to information concerning the structure and function of Defendant's products and/or services. Plaintiff therefore reserves the right to supplement these contentions as it obtains additional information concerning Defendant's products and/or services over the course of discovery.

The applicable statutory subsections of 35 U.S.C. § 271 for each of the Asserted Claims are as follows:

Claims 11, 12, 13, 15, 18, and 20 of the '314 Patent: 35 U.S.C. §§ 271(a).  
Claims 2-3 of the '290 Patent: 35 U.S.C. §§ 271(a).

Plaintiff reserves the right to amend, modify, supplement, or narrow these contentions pursuant to Local Patent Rule 3.11 as discovery in this case proceeds.

**B. Identification Of Accused Instrumentalities.**

Based on the information presently known to B.E., without the benefit of complete discovery from Defendant, B.E. presently accuses at least (but not limited to) the following of Defendant's products and/or services of infringing the Asserted Claims of the '314 Patent: Bing Ads, Microsoft Advertising, Windows Ads in App, any other products and/or services identified in the attached Appendix A, and all reasonably similar products and/or services ("Accused Instrumentalities").

Based on the information presently known to B.E., without the benefit of complete discovery from Defendant, B.E. presently accuses at least (but not limited to) the following of Defendant's products and/or services of infringing the Asserted Claims of the '290 Patent: Microsoft Surface, Microsoft Xbox 360, any other products and/or services identified in the attached Appendix B, and all reasonably similar products and/or services ("Accused Instrumentalities"). In addition, B.E. presently accuses all of Defendant's products and/or services with the following programs, features, software, firmware, or applications of infringing the Asserted Claims of the '290 patent: Xbox Live, Xbox Music, Apps Marketplace, Windows Store, Xbox Video, and Xbox Games (also, "Accused Instrumentalities").

Based on the information presently known to B.E., B.E. contends that the Asserted Claims of the '314 Patent and '290 Patent are infringed by the Accused Instrumentalities. B.E. believes that discovery will reveal additional Accused Instrumentalities, products, and/or services that infringe the '314 Patent and '290 Patent, and B.E. explicitly reserves the right to amend, modify, supplement, or narrow its contentions to identify additional Accused Instrumentalities, products, and/or services pursuant to Local Patent Rule 3.11.

**C. Claim Chart Identifying Claim Elements Present In Accused Instrumentalities.**

Based on the information presently known to B.E., without the benefit of complete discovery from Defendant, B.E. provides the attached Appendix A (which explains how the Accused Instrumentalities and other products/services infringe each of the Asserted Claims of the '314 Patent) and Appendix B (which explains how the Accused Instrumentalities and other products/services infringe each of the Asserted Claims of the '290 Patent). B.E.'s attached Appendices are incorporated by reference as if fully set forth herein. The infringement contention charts appended hereto are exemplary and not limiting, and address the Asserted Claims without the benefit of full discovery. Any citations included in the infringement contention charts are exemplary only, and should not be construed to be limiting.

In the attached Appendices containing B.E.'s infringement contention charts, B.E. has subdivided each Asserted Claim to better explain where each claim element may be found with the respective Accused Instrumentalities and other products/services. The subdivisions in the appended infringement contention charts should not be taken as an indication of the boundaries of claim elements with respect to doctrine of equivalents, or any other issue. Additionally, the Accused Instrumentalities and Defendant's other products/services may infringe the Asserted Claims in multiple ways. B.E. reserves the right to provide an alternative claim mapping or infringement contention.

B.E. reserves the right to amend, modify, supplement, or narrow these contentions pursuant to Local Patent Rule 3.11 as discovery in this case proceeds.

**D. Identification Of Direct Infringement Underlying Allegations Of Indirect Infringement.**

B.E. contends that the Asserted Claims of the '314 Patent and '290 Patent are directly infringed by Defendant. Defendant, without B.E.'s authority, directly infringes the Asserted

Claims of the '314 Patent and '290 Patent under 35 U.S.C. § 271(a) by making, using, offering to sell, or sell its Accused Instrumentalities and other products/services within the United States, or imports into the United States its Accused Instrumentalities and other products/services.

B.E. reserves the right to amend, modify, supplement, or narrow these contentions pursuant to Local Patent Rule 3.11 as discovery in this case proceeds.

**E. Identification Of Elements Present Literally And Present Under The Doctrine Of Equivalents.**

Based on the information presently available to B.E., B.E. contends that each Asserted Claim is literally met in the Accused Instrumentalities and/or other Defendant products/services. At present, B.E. knows of no elements of the Asserted Claims where the doctrine of equivalents would change the infringement analysis set forth in the attached infringement claim charts. Without the benefit of the Court's claim construction, B.E. presently believes that Defendant's Accused Instrumentalities and other products/services literally infringe the Asserted Claims of the '314 Patent and '290 Patent.

Regardless, B.E. also contends that each Asserted Claim is met in the Accused Instrumentalities and/or other Defendant products/services under the doctrine of equivalents. Specifically, to the extent a claim element is not met literally, it is met under the doctrine of equivalents because they perform substantially the same function, in substantially the same way, to achieve substantially the same result. To the extent that any differences are alleged to exist between the Asserted Claims and Defendant's Accused Instrumentalities, products and/or services, such differences are insubstantial.

Information regarding the formulations of the Accused Instrumentalities and Defendant's products/services, and the processing conditions used to manufacture the Accused Instrumentalities and Defendant's products/services, is either confidential or is not publically

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