

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

MICROGRAFX, LLC,

Plaintiff,

v.

Civil Action No. 3:13-cv-03595-N

GOOGLE, INC. and MOTOROLA
MOBILITY, LLC

Defendants.

**PLAINTIFF MICROGRAFX, LLC'S PRELIMINARY DISCLOSURE OF ASSERTED
CLAIMS AND INFRINGEMENT CONTENTIONS**

Plaintiff Micrografx, LLC ("Micrografx"), by and through its attorneys, pursuant to Miscellaneous Order No. 62 ("Order 62") and the Joint Proposed Schedule of the Initial Case Management Report, Dkt. 41 Ex. A, hereby serves its Preliminary Disclosure of Asserted Claims and Infringement Contentions against Google, Inc. ("Google") and Motorola Mobility, LLC ("Motorola") (individually and collectively, "Defendants"), as well Micrografx's accompanying document production as required by Order 62. These contentions address infringement by Google and by Motorola of U.S. Patents No. 6,057,854 ("854 patent"), No. 6,552,732 ("732 patent"), and No. 5,959,633 ("633 patent") (collectively "Asserted Patents").

This disclosure is made solely for the purpose of this action. This disclosure is subject to all objections as to competence, relevance, materiality, propriety, and admissibility, and to any other objections on grounds that would require the exclusion of statements contained herein if such disclosure were asked of, or statement contained herein were made by, a witness present and testifying in court, all of which objections and grounds are expressly reserved and may be interposed at the time of trial.

Discovery in this matter has just begun. Defendants have not yet been required to make their initial production subject to Order 62, 3-4, including: “[s]ource code, specifications, schematics, flow charts, artwork, formulas, or other documentation sufficient to show the operation of any aspects or elements of an accused instrumentality identified by the patent claimant in its paragraph 3-1(a)(3) chart.” *Id.* at 8. Nor have Google and Motorola otherwise produced source code relating to the accused instrumentalities in this matter. Micrografx’s investigation of Google’s and Motorola’s infringement is ongoing. This disclosure is therefore based in large part upon information that Micrografx has been able to obtain publicly, together with Micrografx’s current good faith beliefs regarding the accused instrumentalities. This disclosure is given without prejudice to Micrografx’s rights, and Micrografx hereby expressly reserves its rights under Order 62, 3-6 and 3-7, or any other applicable basis, to further supplement or amend its contentions, including without limitation to add asserted claims or accused instrumentalities as additional facts are ascertained, analyses are made, research is completed, contentions are made, and claims are construed. The following disclosures are made subject to and without waiving any of the foregoing.

I. INFRINGEMENT CONTENTIONS WITH RESPECT TO GOOGLE

A. DISCLOSURE OF CLAIMS ASSERTED AGAINST GOOGLE

Pursuant to Order 62, 3-1(a)(1), Micrografx, based on the information presently available to it, asserts that each of the following claims is infringed by Google: ’854 Patent claims 1, 2, 3, 5, 7, 10, 11, 12, 14, 16, 19, 44, 55, 56, 57, 59, 61, 62, 63, 64, 65, 66, 68, 69, 71,’732 Patent claims 1, 2, 3, 4, 5, 8, 9, 12, 36, 42, and ’633 Patent claims 1, 2, 3, 4, 6, 8, 9, 10, 11, 13, 15.

B. DISCLOSURE OF GOOGLE’S ACCUSED INSTRUMENTALITIES

Pursuant to Order 62, 3-1(a)(2), Micrografx, based on the information presently available to it, identifies the following Google accused instrumentalities and which claims each Google

accused instrumentality is accused of infringing. Each of the Google accused instrumentalities identified below may itself constitute one part or step of a completed act of direct infringement, as described in detail in the infringement charts discussed below and attached hereto as Exhibits 1, 3, and 5.

Google infringes the asserted claims pursuant to § 271(a) by making, using, selling, or offering to sell in the United States without authority the Google accused instrumentalities listed below with respect to each of the Asserted Patents, which accused instrumentalities include technology in the fields of vector graphics ('854 and '732 patents) and external shapes ('633 patent).

1. '854 Patent: Google Infringing Instrumentalities:

- Google's Nexus 4 (Claims 1, 2, 3, 5, 7, 10, 11, 12, 14, 16, 19, 44, 55, 56, 57, 59, 61, 62, 63, 64, 65, 66, 68, 69, 71)
- Google's Nexus 5 (Claims 1, 2, 3, 5, 7, 10, 11, 12, 14, 16, 19, 44, 55, 56, 57, 59, 61, 62, 63, 64, 65, 66, 68, 69, 71)
- Google's Nexus 7 (Claims 1, 2, 3, 5, 7, 10, 11, 12, 14, 16, 19, 44, 55, 56, 57, 59, 61, 62, 63, 64, 65, 66, 68, 69, 71)
- Google's Nexus 10 (Claims 1, 2, 3, 5, 7, 10, 11, 12, 14, 16, 19, 44, 55, 56, 57, 59, 61, 62, 63, 64, 65, 66, 68, 69, 71)
- Google's Chrome Browser (Claims 1, 2, 3, 5, 7, 10, 11, 12, 14, 16, 19, 44, 55, 56, 57, 59, 61, 62, 63, 64, 65, 66, 68, 69, 71)
- Google Maps (Android, iOS, web) (Claims 1, 2, 3, 5, 7, 10, 11, 12, 14, 16, 19, 44, 55, 56, 57, 59, 61, 62, 63, 64, 65, 66, 68, 69, 71)
- Google's Chromebook Pixel (Claims 1, 2, 3, 5, 7, 10, 11, 12, 14, 16, 19, 44, 55, 56, 57, 59, 61, 62, 63, 64, 65, 66, 68, 69, 71)
- Google's servers providing vector graphics (e.g. Google Maps servers) (Claims 1, 2, 3, 5, 7, 10, 11, 12, 14, 16, 19)
- Google's interactive vector objects (Claims 1, 2, 3, 5, 7)

2. '732 Patent: Google Infringing Instrumentalities:

- Google's Nexus 4 (Claims 1, 2, 3, 4, 5, 8, 9, 12, 36, 42)
- Google's Nexus 5 (Claims 1, 2, 3, 4, 5, 8, 9, 12, 36, 42)
- Google's Nexus 7 (Claims 1, 2, 3, 4, 5, 8, 9, 12, 36, 42)
- Google's Nexus 10 (Claims 1, 2, 3, 4, 5, 8, 9, 12, 36, 42)
- Google's Chrome Browser (Claims 1, 2, 3, 4, 5, 8, 9, 12, 36, 42)
- Google Maps (Android, iOS, web) (Claims 1, 2, 3, 4, 5, 8, 9, 12, 36, 42)

- Google's Chromebook Pixel (Claims 1, 2, 3, 4, 5, 8, 9, 12, 36, 42)
- Google's servers providing vector graphics (e.g. Google Maps servers) (Claims 1, 2, 3, 4, 5, 8, 9, 12)
- Google's interactive vector objects (Claims 1, 2, 3, 4, 5)

3. '633 Patent: Google Infringing Instrumentalities:

- Google's Nexus 4 (Claims 1, 2, 3, 4, 6)
- Google's Nexus 5 (Claims 1, 2, 3, 4, 6)
- Google's Nexus 7 (Claims 1, 2, 3, 4, 6)
- Google's Nexus 10 (Claims 1, 2, 3, 4, 6)
- Google Maps Application for Android (Claims 1, 2, 3, 4, 6, 8, 9, 10, 11, 13, 15)

The particular acts constituting infringement by or including each of the above-listed Google instrumentalities are detailed in the claim charts attached herewith as Exhibits 1, 3, and 5, pursuant to Order 62, 3-1(a)(3).

Further, although this disclosure is not required by Order 62, on information and belief, Google also infringes the asserted claims pursuant to § 271(b) by inducing infringement of each of the asserted claims with respect to the above-listed accused instrumentalities, such as by end users of Google devices and services; and such as by Google's inducement of Motorola to make, use, sell, offer for sale, or import the Motorola accused instrumentalities. Similarly, on information and belief, Google induces other third-party device manufacturers through acts like those just described with respect to Motorola. On information and belief, Google actively induces infringement by third parties by actively and knowingly supplying both hardware and software, encouraging consumers to acquire and use such hardware and software in an infringing manner, and thereby making and/or using the infringing systems and apparatuses or performing the steps of the asserted method claims, with knowledge that such conduct constitutes an act of infringement.

Further, although this disclosure is not required by Order 62, on information and belief, Google infringes the asserted claims pursuant to § 271(c) by offering to sell or selling within the

United States software and/or hardware for use in practicing each of the asserted claims, where the software and/or hardware constitutes a material part of the claimed inventions, Google knows the software to be especially made or especially adapted for use in infringement of the asserted claims, and the software and/or hardware is not a staple article or commodity of commerce suitable for substantial non-infringing use.

C. CHARTS IDENTIFYING INFRINGEMENT OF THE MICROGRAFX PATENTS BY THE GOOGLE ACCUSED INSTRUMENTALITIES

Pursuant to Order 62, 3-1(a)(3), attached as Exhibits 1, 3, and 5, are detailed charts identifying specifically where each element of each asserted claim is found within each Google accused instrumentality. Micrografx notes that neither Google nor Motorola has yet provided discovery in this matter and Micrografx has prepared these charts based on the limited information presently available to it and accordingly reserves its right to amend or supplement these charts upon obtaining relevant information during discovery.

D. DOCTRINE OF EQUIVALENTS WITH RESPECT TO GOOGLE

Pursuant to Order 62, 3-1(a)(4), Micrografx contends based on information available to it at this time that each element of each asserted claim is literally present in each Google accused instrumentality as set forth above and identified in the charts attached as Exhibits 1, 3, and 5.

Based on the information presently available to it, Micrografx believes that any element of the asserted claims that is not literally met by the Google accused instrumentalities is likely to be met under the Doctrine of Equivalents. However, Google has not yet made its initial production, as described above. Nor has Google otherwise made any production of source code relating to the Google accused instrumentalities in this matter. Micrografx's investigation of Google's infringement is ongoing.

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