

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

TALSK RESEARCH INC.,

Plaintiff,

v.

EVERNOTE CORPORATION,

Defendant.

Case No. 1:16-cv-02167

Hon. Thomas M. Durkin

JURY TRIAL DEMANDED

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Talsk Research Inc. (“Talsk”) for its Second Amended Complaint against Defendant Evernote Corporation (“Evernote”) states as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284 and 285.

THE PARTIES

2. Talsk is a Delaware corporation with its principal place of business in Chicago, Illinois.

3. Evernote is a Delaware corporation with its principal place of business at 305 Walnut Street, Redwood City, California.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this patent infringement action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Evernote because, on information and belief, Evernote has systematic and continuous contacts with Illinois and this judicial district

EVERNOTE EX. 1011

because Evernote regularly transacts business in the State of Illinois and this judicial district and it has thereby purposefully availed itself of the benefits and protections of the laws of the State of Illinois. Furthermore, this Court has personal jurisdiction over Evernote because, as described further below, Evernote has committed acts of patent infringement giving rise to this action within the State of Illinois and has thus established minimum contacts such that the exercise of personal jurisdiction over Evernote does not offend traditional notions of fair play and substantial justice.

6. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391 and 1400(b).

THE PATENT-IN-SUIT

7. On February 13, 2007, U.S. Patent Number 7,178,097 (the “’097 Patent”), entitled “Method And System For Using A Communications Network To Archive And Retrieve Bibliography Information And Reference Material,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘097 Patent is attached as Exhibit A to this Complaint.

8. Prior to the claimed invention, as the internet continued to grow as a publishing medium, a problem developed due to the “decay” of citations in online references. *See, e.g.* Exhs. F, G.

9. The innovations disclosed in the ‘097 Patent, through the implementation of computer software in the context of online or electronic publishing, provide a technical solution (*e.g.*, enabling an author of a manuscript to reference a webpage and subsequently enabling a reader of the manuscript to retrieve the referenced webpage such that retrieval returns the information as it existed when originally referenced) to the technical problem of “decay” of citations in online references. These innovations “relate[] generally to publishing and, more

particularly, to a method and system for using a communications network such as the Internet to archive and retrieve bibliography information and reference material cited in a manuscript.” (Ex. A, the ‘097 Patent at 1:9-13.) The innovative technical solution can be characterized as “using a communications network to archive and retrieve bibliography information and reference material from an Internet source such as a website cited in a manuscript” or “provid[ing] a method and system for using a communications network to archive a copy of the information from an Internet source cited in a manuscript.” (*Id.* at 2:57-65.)

10. Talsk is the assignee and owner of all rights, title, and interests in the ‘097 Patent, including the right to assert all causes of action arising under the ‘097 Patent and the right to any remedies for infringement of the ‘097 Patent.

BACKGROUND FACTS

11. Srikrishna Talluri, also known as Krish, is the inventor of the methods disclosed in the ‘097 Patent. Mr. Talluri applied for the ‘097 Patent on November 13, 2000.

12. As of the time the ‘097 Patent issued, Mr. Talluri had founded Business One, Inc., which practiced the ‘097 Patent by offering to sell the “RefMArc” product. As of 2012, Mr. Talluri had also founded Talsk, which also practiced the ‘097 Patent by offering to sell the “JotLingo” product.

13. JotLingo lets users take notes and save web-clips on the fly and access them from anywhere.

14. On June 8, 2012, Mr. Talluri emailed the Chief Operations Officer of Evernote, Mr. Ken Gullicksen, stating as follows: “I’m writing to inquire if Evernote would be interested in JotLingo. In addition to the innovative features we’re building, we also have patents that should

be of increasing importance to Evernote—in light of the technical changes you’ve been making over the past year.” (Ex. B, June 8, 2012 E-mail from Talluri to Gullicksen.)

15. Mr. Gullicksen met with Mr. Talluri on June 13, 2012.

16. On June 13, 2013, Mr. Talluri gave a presentation of JotLingo to Evernote and Mr. Gullicksen.

17. During the meeting between Mr. Talluri and Mr. Gullicksen on June 13, 2012, Mr. Gullicksen made a video recording of a portion of Mr. Talluri’s presentation of JotLingo.

18. On June 14, 2012, Mr. Talluri emailed Mr. Gullicksen, requesting that Evernote provide a copy of the video Gullicksen took of the JotLingo presentation without Mr. Talluri’s permission. (Ex. C, June 14, 2012 E-mail from Talluri to Gullicksen.)

19. In his June 14, 2012 e-mail, Mr. Talluri copied the then Chief Executive Officer of Evernote, and current Executive Chairman of Evernote, Mr. Phil Libin. (*Id.*)

20. Six months later, subsequent to Mr. Talluri’s meeting with, and presentation to, Evernote, Evernote made technical changes to the Evernote product and introduced Evernote Business.

21. Specifically, after meeting with Mr. Talluri and recording portions of his presentation, Evernote made technical changes and incorporated the changes its product. Evernote’s technical changes to its product copied the patented components of the JotLingo system and infringe claims of the ‘097 Patent.

22. Indeed, Evernote incorporated all key features into its product that were outlined by Mr. Talluri in his demo to Mr. Gullicksen. (*Compare*, Ex. D, June 13, 2012 Jotlingo PowerPoint Presentation to Evernote, *with* Ex. E, August 24, 2012 Evernote Blog.)

COUNT I – DIRECT INFRINGEMENT OF U.S. PATENT NO. 7,178,097

23. The allegations set forth in the foregoing paragraphs 1 through 22 are hereby alleged and incorporated by reference.

24. In violation of 35 U.S.C. §271(a), Evernote has directly infringed and continues to directly infringe, literally, and under the doctrine of equivalents, one or more claims of the '097 Patent by making, using, offering for sale, selling, or importing the Evernote platform, including Evernote Web Clipper (the "Evernote Reference Preservation System"), in this judicial district and elsewhere in the United States (directly or through intermediaries), that perform the steps recited in at least Claims 8, 19, and 23 of the '097 Patent.

25. Evernote directly infringes at least Claims 8, 19, and 23 of the '097 Patent by performing some of the steps of the claimed methods and directing and controlling individual and corporate users of the Evernote Reference Preservation System to perform the remaining claimed steps by conditioning use of the Evernote Reference Preservation System on performance of the remaining patented steps. Evernote also directs and controls its individual and corporate users by conditioning the receipt of a benefits associated with the Evernote Reference Preservation System—in this case, using the Evernote Reference Preservation System, to archive a web site for subsequent retrieval as bibliographical information—upon performance of the remaining steps in the patented method. Evernote also establishes the manner and timing of the performance by instructing its users how to use the Evernote Reference Preservation System.

26. Users of the Evernote Reference Preservation System include corporate entities and persons, including, for example, Evernote corporate customers and agents and/or employees of Evernote's corporate customers that use the Evernote Reference Preservation System.

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