

**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

FIRST 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

15. Inventor Russell T. Davis pioneered several inventions related to Reusable Data

Markup Language including, but not limited to, the Asserted Patents.

16. Upon information and belief, Defendant Merrill Corporation markets the Merrill Bridge product to assist companies in filing reports in the eXtensible Business Reporting Language (“XBRL”)

17. Upon information and belief, Merrill Corporation’s customers enter into contracts with Merrill Corporation via Merrill Communications. A standard contract is attached hereto as Exhibit B.

18. Mattress Firm uses the eXtensible Business Reporting Language standard to routinely file documents with, inter alia, the Securities and Exchange Commission (“SEC”). An example of a Mattress Firm SEC filing is located at:

[https://www.sec.gov/Archives/edgar/data/1419852/000141985216000022/0001419852-16-](https://www.sec.gov/Archives/edgar/data/1419852/000141985216000022/0001419852-16-000022-index.htm)

[000022-index.htm](https://www.sec.gov/Archives/edgar/data/1419852/000141985216000022/0001419852-16-000022-index.htm). Upon information and belief, Mattress Firm uses Merrill Bridge to prepare its filings.

19. Upon information and belief, Merrill Corporation and/or Merrill Communications has agreed to defend and indemnify Mattress Firm for the claims set forth in this Complaint.

COUNT I: INFRINGEMENT OF THE U.S. PATENT 7,650,355

20. Plaintiffs re-allege and incorporate by reference the prior paragraphs 1 through 19 of this Complaint, as if fully set forth herein.

21. On January 19, 2010, U.S. Patent No. 7,650,355 was duly and legally issued to Russell T. Davis as the inventor thereof. A true and correct copy of the ‘355 Patent, which is entitled “Reusable Macro Markup Language”, is attached hereto as Exhibit C.

22. Upon information and belief, Defendant Mattress Firm has infringed the ‘355 Patent in violation of 35 U.S.C. § 271(a) by using the patented invention to, *inter alia*, prepare

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