

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION**

MemoryWeb, LLC,

Plaintiff,

vs.

Apple, Inc.,

Defendant.

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Civil Action No. 6:21-cv-531

Jury Trial Demanded

COMPLAINT

Plaintiff MemoryWeb, LLC (“Plaintiff” or “MemoryWeb”) by its attorneys, as and for its Complaint against Defendant Apple, Inc. (“Defendant” or “Apple”) states and alleges 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. MemoryWeb is a corporation existing and organized under the laws of the state of Illinois. MemoryWeb has its principal place of business at 526 Crescent Blvd. Suite 233, Glen Ellyn, Illinois.

3. Apple is a corporation existing and organized under the laws of the State of California. Apple has its principal place of business at One Apple Park Way Cupertino, California. Apple maintains one or more regular and established places of business in the Western District of Texas, including at least at: 3121 Palm Way, Austin, Texas; 2901 S.

Capital of Texas Hwy., Austin, Texas; 12535 Riata Vista Circle and 5501 West Parmer Lane, Austin, Texas; 8401 Gateway Boulevard West, El Paso, Texas; 15900 La Cantera Parkway, San Antonio, Texas; and 7400 San Pedro Ave., San Antonio, Texas. Apple may be served with process through its registered agent in the state of Texas: CT Corporation, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States of America, Title 35 of the United States Code. Accordingly, this Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Apple under the United States Constitution, the laws of the State of Texas, including Texas's long-arm statute, and the Federal Rules of Civil Procedure. Apple has sufficient minimum contacts with this District, through at least its places of business at the addresses identified above, its acts of infringement within this District, and has continuously and systematically solicited and transacted business in this District such that this Court has personal jurisdiction over Apple.

6. Apple is registered to do business in the State of Texas.

7. Venue is proper in this District under 28 U.S.C. § 1391 and 28 U.S.C. § 1400(b) because Apple has one or more regular and established places of business within this District and has committed acts of infringement in the District directly or indirectly—including through subsidiaries or intermediaries such as distributors, retailers, and contract manufacturers; by conducting its business extensively throughout the District by shipping, manufacturing, distributing, offering for sale, selling, and advertising infringing

products (including the associated software and operating systems) and services which practice one or more claimed methods in the Asserted Patents (“Accused Instrumentalities”); and by purposefully and voluntarily placing Accused Instrumentalities into this District and into the stream of commerce with the intention and expectation that they will be purchased and used in an infringing manner by consumers in this District. On information and belief, Apple also uses Accused Instrumentalities in this District.

8. Apple markets, sells, and offers to sell Accused Instrumentalities to actual and potential customers and end-users located in the District including through its operation of retail stores in the District. Retail Apple Stores in this District include at least the following locations: 3121 Palm Way, Austin, Texas; 2901 S. Capital of Texas Hwy., Austin, Texas; 8401 Gateway Boulevard West, El Paso, Texas; 15900 La Cantera Parkway, San Antonio, Texas; and 7400 San Pedro Ave., San Antonio, Texas. Ex. 5.

9. Apple also authorizes numerous third parties to sell infringing products in this District and advertises these locations on its website. For example, there are at least 99 Apple Shops in Austin, Texas authorized by Apple to sell iPhone and iPad products and at least 33 Apple Shops in Austin, Texas authorized by Apple to sell Mac products. Ex. 6; Ex. 7. There are at least 99 Apple Shops in San Antonio, Texas authorized by Apple to sell iPhone and iPad products and at least 28 Apple Shops in San Antonio, Texas authorized by Apple to sell Mac products. Ex. 8; Ex. 9. There are at least 99 Apple Shops in Waco, Texas authorized by Apple to sell iPhone and iPad products and at least 48 Apple Shops in Waco, Texas authorized by Apple to sell Mac products. Ex. 10; Ex. 11.

10. On information and belief, Apple has derived substantial revenue from infringing acts in the Western District of Texas, including from the sale and use of Accused Instrumentalities.

11. Apple employs thousands employees in this District in a variety of capacities, including at least the manufacturing of one or more Accused Instrumentalities, such as the Mac Pro product. Ex. 12. As of November 2019, Apple employed approximately 7,000 employees in this District and had invested over \$200 million in its Austin facility. *Id.* Apple's website lists hundreds of job openings in Austin and the Austin metro area, including in the software and services, design, operations and supply chain, marketing, and sales and business development teams. Ex. 13.

12. On or around November 20, 2019, Apple announced that it had broken ground on a new \$1 billion, 3 million square foot campus in Austin that will start with 5,000 new employees and is anticipated to grow to as many as 15,000 employees. Ex. 12. Upon completion, Apple's Austin facility will be its second-largest campus in the world outside of its Cupertino headquarters.

13. Apple is planning to build a 192-room hotel as part of its Austin campus, which appears scheduled for completion in 2022. Ex. 14. On information and belief, Apple intends for Apple employees traveling to Austin for business to stay at this hotel.

14. There is significant local interest in this District due to Apple's long-standing relationship with and presence in the Austin area. Apple is one of the largest private employers in this District and is the largest private employer in Austin, Texas. On information and belief, Apple has or will receive millions of dollars in incentives in this District from state and local governments in exchange for its investments and continued

employment of individuals in this District, including taxpayer-funded grants from the Texas Enterprise Fund and a significant property tax cut from Williamson County. On information and belief, Apple would not have invested in and expanded its presence in this District, including its manufacturing of certain Accused Instrumentalities, without these taxpayer-funded incentives.

BACKGROUND

MemoryWeb's Innovative Technology

15. MemoryWeb was founded in 2014 by Christopher J. Desmond, Nancy L. Desmond, and L. Michael Taylor (“the Founders”).

16. The Founders were avid curators of photographs, possessing stockpiles of digital and print photographs that they wanted to preserve and share (e.g., family photos and photos from other memorable events in their lives). The Founders recognized that the then-available technology was not able to manage, organize, and display their photos and related information in efficient and intuitive ways.

17. Recognizing the drawbacks and limitations on prior attempts to manage, organize, and display digital photographs and related information, the Founders set out to develop an application that, among other things, would allow users to explore their libraries of photos using a variety of methodologies for more efficient digital file

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