

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

Case Number:

BAY DRIVE STUDIOS, LLC,

Plaintiff,

v.

HEARHERE, INC.

Defendant.

COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

The Plaintiff, BAY DRIVE STUDIOS, LLC (hereinafter referred to as “BAY DRIVE”), by and through its undersigned counsel, hereby files its Complaint against the Defendant, HearHere Inc. (hereinafter referred to as “HEARHERE”), and alleges, as follows:

Jurisdictional Allegations

1. This is an action against HEARHERE seeking relief for infringement of BAY DRIVE’s patents under 35 U.S.C. § 271. The damages sought exceed \$75,000, exclusive of interest, costs, and attorneys’ fees.

2. This Court has subject matter jurisdiction over the claims in this action that relate to patent infringement, pursuant to the provisions of 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338(a).

3. The Court has jurisdiction over all claims in this action under 28 U.S.C. § 1332, (Diversity of Citizenship), in that BAY DRIVE is incorporated in Florida, and HEARHERE is incorporated in California.

4. HEARHERE, at all times relevant hereto, has been engaged in commerce, or in activities affecting commerce of the United States, as well as in the State of Florida.

Parties

5. BAY DRIVE is a Florida corporation located at 4518 Carambola Circle South, Coconut Creek, Florida 33066.

6. HEARHERE is a California corporation located at 1117 State St. STE 66, Santa Barbara, California 93101.

Venue

7. Venue is proper in this district under 28 U.S.C. § 1391(b) in that BAY DRIVE is a Florida corporation. The harm that was caused by HEARHERE, as well as the events or omissions giving rise to the claims, occurred in this District. Lastly, HEARHERE's mobile application is used in the state of Florida, and HEARHERE is subject to personal jurisdiction in this Judicial District with respect to this action.

The Media and Location Based Social Network Patents

8. On April 5, 2022, BAY DRIVE was assigned by Motormouth, LLC (hereinafter referred to as "Motormouth"), the United States Patent Registration Nos. 9,305,020; 9,600,481; and 9,600,482. The patents, which are subject to this lawsuit, are collectively referred to herein as the "MLSN Patents."

9. Since that date, BAY DRIVE has been, and remains, the final assignee and the lawful owner of the MLSN Patents.

10. The MLSN Patents are:

directed to recording and providing media files based on a location. Such systems and methods may be transacted by a client application or a processor in communication with one

or more electronic devices. In accordance with some embodiments of the present invention, methods may include receiving from a first device: a media file; data comprising information identifying a location associated with the media file; storing the media file and data in a database; receiving from a second device information identifying a location of the second device; determining a geographic radius of the second device based upon user selection; determining if one or more media files stored in the database are associated with a location in the geographic radius of the second device; and sending the one or more media files to the second device.

11. In essence, the MLSN Patents allow individuals to interact with one another using electronic devices, giving the users the ability to record and provide media files based on their specific geographic location(s). The MLSN Patents are directed to methods and systems for recording audio or media files associated with a location and providing recorded audio or media files associated with a location to one or more users.

12. The MLSN Patents allows users to share their thoughts or pictures using methods that ideally combine geo-location and user-submitted media, on their devices or applications.

020 Patent

13. United States Patent Registration No. 9,305,020 (hereinafter referred to as the “020 Patent”) is named the “Media and Location Based Social Network” and was issued on May 14, 2013. The 020 Patent is owned by BAY DRIVE.

14. The 020 Patent is made up of fifteen (15) Claims and ten (10) Drawing Sheets. A true and correct copy of the 020 Patent is attached hereto and marked as Exhibit “A.”

15. The 020 Patent invention claimed is primarily:

A client application executable on a mobile computing device to provide media and location based social network services, the client application operable to: receive, from a user, log in information; receive a geographic radius selected

by the user, wherein the geographic radius extends from a location of the user and the mobile computing device and defines a geographic range within which the user desires to receive media files; determine a current location of the mobile computing device; determine, based at least in part on the geographic radius and the current location, a current geographic range surrounding the user and the mobile computing device; responsive to determining that a media file is associated with a location within the current geographic range, receive, from a server database, the media file associated with the location within the current geographic range; and play, on the mobile computing device, the media file.

16. The 020 Patent claims are all based upon the geographic location of the user on the social networking service and the designated media files associated with a particular geographic range. The 020 Patent specifically claims the client application of this system wherein the current location of the mobile computing device is determined based upon a longitude and latitude of the mobile computing device, and wherein the media file associated with the location within the current geographic range comprises audio files.

17. In addition, the 020 Patent specifically claims the client application wherein the client application is further configured to: receive, from the user, an indication of a grouping of submitters from whom the user desires to receive media.

18. The 020 Patent also claims the client application wherein the current location of the mobile computing device is periodically deemed, and wherein the mobile computing device is selected from the group consisting of: a mobile telephone, a tablet computer, a laptop computer, a navigation system, a digital music player, and an electronic reader.

481 Patent

19. United States Patent Registration No. 9,600,481 (hereinafter referred to as the “481 Patent”), dated three (3) years after the 812 Patent and named “Media and Location Based Social Network,” is a continuation of the 020 Patent. The 481 Patent is owned by BAY DRIVE.

20. The 481 Patent is made up of twenty-one (21) Claims and ten (10) Drawing Sheets. A true and correct copy of the 481 Patent is attached hereto and marked as Exhibit “B.”

21. The 481 Patent claims:

A client application executable on a mobile computing device to provide media and location based social network services, the client application operable to: receive, from a user, log in information; retrieve a user profile based on the log in information, the user profile identifying a geographic radius extending from the mobile computing device within which the user is to receive media files; determine a current location of the mobile computing device; determine a current speed of the mobile computing device; determine, based at least in part on the geographic radius, the current speed, and the current location, a current geographic range surrounding the mobile computing device; responsive to determining that one or more media files is associated with a location within the current geographic range, receive, from a server database, the one or more media files associated with the location within the current geographic range; and play, on the mobile computing device, the one or more media files.

482 Patent

22. The final subject Patent, United States Patent Registration No. 9,600,482 (hereinafter referred to as the “482 Patent”), is named the “Media and Location Based Social Network” and is a continuation of the 020 Patent. The 482 Patent is owned by BAY DRIVE.

23. The 482 Patent, dated three (3) years after the 020 Patent, is made up of twenty (20) Claims and ten (10) Drawing Sheets. A true and correct copy of the 482 Patent is attached hereto

and marked as Exhibit “C.”

24. The 482 Patent claims:

A client application executable on a mobile computing device to provide media and location based social network services, the client application operable to: receive, from a user, one or more indications of a type of media file content the user desires to receive; determine a current speed of the mobile computing device; receive a geographic radius selected by the user, wherein the geographic radius extends from a location of the mobile computing device and a geographic range around the mobile computing device within which the user is to receive media files is defined by the geographic radius and the current speed; determine a current location of the mobile computing device; transmit, to a server database, the geographic radius, the current speed, and the one or more indications of a type of media file content the user desires to receive; receive, from the server database, at least one media file comprising a type of media file content indicated as one the user desires to receive and associated with a location within the geographic range; and play, on the mobile computing device, the at least one media file.

25. Moreover, the 482 Patent claims the client application wherein the location of the mobile computing device is determined based upon a longitude and latitude of the mobile computing device, and wherein at least one media file associated with the location within the geographic range comprises at least one of the audio files, video files, or image files.

26. The 482 Patent also claims the client application wherein the client application is further configured to: receive, from the user, an indication of a grouping of submitters from whom the user desires to receive media.

27. In addition, the 482 Patent claims the client application wherein the location of the mobile computing device is periodically determined, and the type of media file content is based on one or more topics or tags associated with the media file.

28. Lastly, the 482 Patent claims the client application wherein the mobile computing device is selected from the group consisting of: a mobile telephone, a tablet computer, a laptop computer, a navigation system, a digital music player, and an electronic reader.

Factual Background

29. Daniel Jacoby is the inventor of the MLSN Patents and the current owner and President of BAY DRIVE.

30. Daniel Jacoby was the original owner of certain intellectual property rights, including the rights to United States Patent Registration Nos. 9,305,020; 9,600,481; and 9,600,482; and the United States trademark registrations related to the subject Patents (hereinafter collectively referred to as the “Contributed IP”).

31. On May 15, 2013, Daniel Jacoby transferred his rights to the Contributed IP to Motormouth, a company of which he was a member.

32. On April 5, 2022, Motormouth entered into an Intellectual Property Assignment and Contribution Agreement (hereinafter referred to as the “Agreement”) with BAY DRIVE, the Assignee. A copy of the Assignment is attached hereto as Exhibit “D.”

33. Under the Agreement, Motormouth contributed, assigned, and transferred to BAY DRIVE all of Motormouth’s right, title, and interest in the Contributed IP to BAY DRIVE. Daniel Jacoby, the inventor of the Contributed IP, was the President of BAY DRIVE when the right, title, and interest in the Contributed IP was transferred to BAY DRIVE.

34. As such, BAY DRIVE, is the sole owner of all the intellectual property rights in the Contributed IP.

35. Daniel Jacoby previously used his intellectual property rights in the patents to create the “YapSpot” application, (subject matter IP being infringed), which allows individuals to

listen to and share broadcasts, regarding different locations all over the world. Yapspot also gives users the ability to say what is on their mind, using their own voice and allowing them to respond directly to others using the “@ me” feature.

36. YapSpot is owned by the Plaintiff, BAY DRIVE.

37. YapSpot allows users to create an avatar and corresponding username to put recordings on a map in any location for others to see. These recordings give users insight into other people’s thoughts about different locations around the world. Users can hear every other user’s recording(s), no matter where the users are geographically located at the time.

38. Also, YapSpot application users can filter through the newest and oldest recordings, in a given location, so that the user can choose which recording they would like to hear. The YapSpot app is akin to a “world-wide guided tour.”

39. HEARHERE created an app called “Autio,” which is an embodiment of the inventions already patented by Daniel Jacoby and now owned by his company, BAY DRIVE.

40. On Autio’s website, its description of the application states, “Autio is a network of stories told by master storytellers. . .to bring the landscape, its people, and its history alive as you pass through it.” Furthermore, the website states, “[e]ach pin offers an answer, and often to a question one doesn’t think to ask. Story subjects include history, sports, culture, music, geology, pretty much everything you can think of. Listen to the places, people and events you’re seeing out your window. Educational? Sure. Entertaining? Absolutely.”

41. Auto is now a popular app which has celebrity owners and endorsers.

42. BAY DRIVE has not contributed, assigned, or transferred *any* rights, title, or interest in its intellectual property rights to the MLSN Patents to HEARHERE.

43. HEARHERE’s app is directly infringing on BAY DRIVE’s rights to the patents, as

BAY DRIVE has the intellectual property rights to client applications “executable on a mobile computing device to provide media and location based social network services, the client application operable to: receive log in information from a user; determine a current location of the device. . .and when the user enters an area defined by a radius selected by the user, receive from the server database and play media on the mobile computing device received from the other users and associated with the area defined by the radius.”

44. Accordingly, BAY DRIVE brings this action against HEARHERE, due to the unlawful infringement of its patents by HEARHERE. Moreover, this action is brought due to HEARHERE’s unlawful actions in continuing to use and produce an invention utilizing the MLSN Patents, which are rightfully owned and protected by the MLSN Patents, with no legal right to do so.

45. Furthermore, HEARHERE is using the MLSN Patents, without any authorization from the owner, BAY DRIVE, or paying compensation to the owner of the Patent, to use the MLSN Patents.

46. Due to the actions of HEARHERE, BAY DRIVE has been forced to retain the undersigned attorneys and is now obligated to pay their reasonable attorneys’ fees and costs.

Count I – Patent Infringement

47. The Plaintiff avers Paragraphs 1 through 45, which are stated above and incorporate the allegations therein, as though they are fully restated and incorporated in this Count by reference.

48. BAY DRIVE has undisputed ownership rights to the MLSN Patents, which are valid and enforceable.

49. In the year 2020, HEARHERE began infringing upon the MLSN Patents,

specifically the 020, 481, and 482 Patents, by making, selling, using, and profiting off a product using claims patented by Daniel Jacoby. At the time of the filing of this Complaint, HEARHERE is still infringing on the MLSN Patents.

50. HEARHERE is selling the “Autio” app, which is executable on a mobile computing device, to provide media and location based social network services, with the client application operable to: receive log in information from a user, determine a current location of the device, and when the user enters an area defined by a radius selected by the user, receive from the server database and play media on the mobile computing device associated with the area defined by the radius.

51. As such, HEARHERE has infringed and continues to infringe on BAY DRIVE’s patent rights under 35 U.S.C. § 271(a) by advertising, selling, and profiting off an application which is an embodiment of certain claims patented by BAY DRIVE.

52. Moreover, HEARHERE has infringed and continues to infringe on BAY DRIVE’s patent rights under 35 U.S.C. § 271(a), by making, using, offering to sell, and selling products which infringe on BAY DRIVE’s patent rights.

53. HEARHERE’s infringing conduct has damaged BAY DRIVE in a sum to be shown by proof at trial.

WHEREFORE, the Plaintiff, BAY DRIVE respectfully requests the following relief against the Defendants, as follows:

- a. A temporary restraining order and preliminary injunction prohibiting HEARHERE from infringing on the MLSN Patents during the pendency of this action;

- b. A final and permanent injunction restraining HEARHERE and any of HEARHERE's agents, servants, employees, or other persons against continued infringement;
- c. Monetary Damages awarded to BAY DRIVE based on the harm caused by the infringement of HEARHERE, including the Profits of HEARHERE;
- d. An assessment of interest, costs, and attorneys' fees against HEARHERE; and
- e. Such further and other relief as this Honorable Court may deem just and proper.

Demand for Trial by Jury

The Plaintiff, BAY DRIVE STUDIOS, LLC, demands a trial by jury on all issues so triable.

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