

IN UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

COLLEGENET, INC.,

Plaintiff,

vs.

MARKETLINX, INC., and RAPATTONI
CORPORATION,

Defendants.

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Civil Action No. 1:09-cv-544(SS)

JURY DEMANDED

STATEMENT ON INFRINGEMENT

Plaintiff CollegeNet, Inc. (“CollegeNet”) makes the following statement on infringement of U.S. Pat. No. 6,910,045 (the “’045 patent”) by Defendants MarketLinx, Inc. (“MarketLinx”) and Rapattoni Corporation (“Rapattoni”). This statement is made without the benefit of discovery and on the basis of information reasonably available at the time and belief. Consequently, the views expressed here may change as discovery proceeds.

The ’045 Patent: The ’045 patent is directed to automatic delivery of a specified message to specified recipient(s) when data entered in a electronic form is matched to a specified combination of one or more fields and field values in a web-based template. A variety of businesses may use the conditional delivery of an institution-specified message to a specified recipient when a combination of fields and values specified by that institution is matched by data posted on an electronic form. The ’045 patent is used by the Defendants to provide real estate organizations with tools to conditionally message specified recipients (e.g., sales prospects) with specified messages when real estate listings posted on electronic forms are matched to combinations of attributes of real estate sought by buyers through web-based templates.

Claims Asserted and Products Accused: The '045 patent has been reexamined by the U.S. Patent and Trademark Office. In that reexamination, originally allowed claims 1-16 were confirmed as being patentable and new claims 17-29 were added and allowed. Of those claims, CollegeNet asserts that MarketLinx and Rapattoni infringe method claims 1, 3, 4, 5, 6, 8, 22, 24, 27 and 28 and apparatus claims 10, 12, 13, 14, and 16 of the '045 patent (the "Asserted Claims"). MarketLinx infringes the Asserted Claims at least by making, using, offering to sell and selling software products known as Tempo and MLXchange (the "MarketLinx Products"). Rapattoni infringes the Asserted Claims at least by making, using, offering to sell and selling a software product known as the Rapattoni MLS. Collectively, the MarketLinx Products and the Rapattoni MLS presently are the "Accused Products."

Infringement of Independent Claims 1 and 10: Each of the Asserted Claims recites the elements stated below and identified as Limitations #1 through #4, either explicitly or by being dependent upon an independent claim. The method claims of the '045 patent require performance of Limitations #1 through #4 and the apparatus claims of the '045 patent require structure configured to perform Limitations #1 through #4. A product or process that performs all of Limitations #1 through #4 (and satisfy the preamble) infringes independent method claim 1. Using, making, selling or offering to sell an apparatus that has a central processing unit and a computer memory storing instructions for performing Limitations #1 through #4 (and satisfying the preamble) infringes independent apparatus claim 10.

Limitation #1 – *“presenting a form on behalf of the institution over a computer network to a form user to enter data;”* The Accused Products are used to present a form on behalf of an institution (e.g., a real estate organization) over a computer network (e.g., the Internet) to a form user (e.g., a listing agent) to enter data (e.g., a new property listing).

Limitation #2 – *“presenting to the institution a web-based template through which the institution can specify a message, one or more recipients for that message, and a combination of one or more fields and the corresponding field value or values which if matched by data submitted from a form user will automatically cause delivery of that message to the one or more recipients;”*

The Accused Products are used to present a web-based template to the real estate organization through which a message and one or more recipients for that message is specified as well as a combination of one or more fields and the corresponding field value or values which if matched by data submitted by a form user will automatically cause delivery of that specified message to the specified recipient(s).

Limitation #3 – *“comparing data entered by a form user to each combination of the one or more fields and the corresponding field value or values so specified by the institution, and”*

The Accused Products are used to compare the data (e.g., the property listing) entered by the form user to the combination of fields and field values specified through the template (e.g. the property attributes sought by the buyer).

Limitation #4 – *“upon detecting a match, delivering the specified message to the one or more recipients.”* In the Accused Products, upon detecting a match, the message specified through the template is automatically delivered to the one or more recipients.

The preambles of claims 1 and 10, respectively, commence with, “[a] method of” and “[a]n apparatus for” and then recite, *“simplifying workflow and improving responsiveness for an institution by conditionally messaging one or more parties based upon data entered by a user into a web form”* Those attributes are satisfied by the Accused Products. Because Limitations #1 through #4 of claims 1 and 10 are met and the preambles satisfied by the Accused Products, claims 1 and 10 are infringed by the Accused Products.

The Asserted Dependent Claims: Claims 3 – 6, 8, 22, 24, 27 and 28 depend upon claim 1.

Claims 12 – 14 and 16 depend upon claim 10. The extent of infringement of the dependent claims is not considered here, and only limitations explicitly included in the dependent claims are referred to below. As required by claim 3, the Accused Products perform each of the steps of claim 1 but, particularly, when those products are “hosted” by the respective Defendants, those steps are not performed by the recited institution or form user. Therefore, claim 3 is infringed. Infringement of the '045 patent requires that the specified message be specified through the template and not the form. Even so, with the Accused Products a message can be specified by the institution through the template so as to incorporate some data entered by the form user. Consequently, claim 4 is infringed. As to claim 5, the Accused Products can deliver the specified message to recipients determined by the content of the data submitted by the form user. Consequently, claim 5 is infringed. Claim 6 requires that delivering the specified message includes sending an email. With the Accused Products, the message that has been specified through the template is delivered by sending an email to the specified recipient(s). Consequently, claim 6 is infringed. The Accused Products use a search engine to compare stored property listings submitted by forms users with combinations of fields and field values specified in templates. Consequently, when they do, claim 8 is infringed. The Accused Products can deliver the specified message to the forms user, and when they do, claim 22 is infringed. The Accused Products can deliver different messages to different recipients as specified by the institution, and when they do, claim 24 is infringed. The Accused Products can also deliver a message specified through the template that includes plain language text bringing at least a portion of the matched data to the attention of the recipient, and when they do, claim 27 is infringed. The Accused Products can deliver a message specified through the template that includes nothing from the form and when they do, claim 28 is infringed.

In the Accused Products, the instructions for delivering the specified message to the one or more recipients include (a) instructions for delivering a message that includes at least some data entered by the form user, (b) instructions for delivering the specified message to the recipients determined by the content of the data submitted by the form user and (c) instructions for sending an e-mail to the one or more recipients. Therefore, claims 12, 13 and 14 are infringed. In the Accused Products, the instructions for comparing data entered by a form user to each combination of one or more fields includes instructions for using a search engine to compare stored entries corresponding to data submitted from forms users with combinations of one or more fields on web-based templates newly completed by the real estate organization. Therefore, claim 16 is infringed.

Dated: December 4, 2009

Respectfully submitted,

By: /s/J. Scott Denko

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ATTORNEYS FOR COLLEGENET, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing document was filed with the Court and has been served on December 4, 2009, on all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

/s/J. Scott Denko

J. Scott Denko