

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

EMPLOYMENT LAW COMPLIANCE, INC.,

Plaintiff,

vs.

**EMPOWER SOFTWARE SOFTWARE
SOLUTIONS, INC. and HRSMART, INC.**

Defendants.

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Case No. 3:13-cv-04197-N

Jury Trial Demanded

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Employment Law Compliance, Inc. (“ELC”) files this First Amended Complaint for Patent Infringement against Empower Software Solutions, Inc. (“ESSI”) and HRSmart, Inc. (“HRSmart”), for infringement of United States Patent Number 7,330,817 (“the ‘817 Patent”).

NATURE OF THE ACTION

1. This is an action for patent infringement under Title 35 of the United States Code.
2. On information and belief, Defendant ESSI makes, uses, sells, offers for sale, and/or imports into the United States products and/or services that infringe one or more claims of the ‘817 Patent.
3. On information and belief, Defendant HRSmart makes, uses, sells, offers for sale, and/or imports into the United States products and/or services that infringe one or more claims of the ‘817 Patent.
4. ELC seeks damages pursuant to 35 U.S.C. § 284 and injunctive relief, among other relief, for Defendants’ infringement of the ‘817 Patent.

THE PARTIES

5. Plaintiff Employment Law Compliance, Inc. is a corporation organized and existing under the laws of the State of Georgia with its principal place of business in Atlanta, Georgia. ELC does business with clients in Texas and, more specifically, in the Northern District of Texas.
6. On information and belief, Defendant Empower Software Solutions, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 2360 Campbell Creek Boulevard, Richardson, Texas 75082. ESSI has been duly served with process in this proceeding.
7. On information and belief, Defendant HRSmart, Inc. is a corporation organized and existing under the laws of the State of Delaware with its principal place of business located at 2929 N. Central Expressway, Richardson, Texas 75080. HRSmart may be served with process through its registered agent CT Corporations System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

8. This is a civil action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 101 et seq. Subject matter jurisdiction is conferred on this Court pursuant to 28 U.S.C. §§ 1331 and 1338(a).
9. This Court has jurisdiction over ESSI, because on information and belief, ESSI has an established place of business in this judicial district, regularly engages in business in this judicial district and has committed acts of patent infringement in this judicial district. ESSI is therefore subject to the personal jurisdiction of this Court.

10. This Court has jurisdiction over HRSmart, because on information and belief, HRSmart has an established place of business in this judicial district, regularly engages in business in this judicial district, has sold, used and continues to sell and use infringing products and services in this judicial district, and has committed acts of patent infringement in this judicial district. HRSmart is therefore subject to the personal jurisdiction of this Court.
11. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)-(d) and 1400(b).

OPERATIVE FACTS

12. ELC incorporates by reference the paragraphs 1 – 11 above as if fully set forth herein.
13. On February 12, 2008, the United States Patent and Trademark Office (“USPTO”) duly and legally issued the ‘817 Patent, entitled “System and methods for employment law compliance, establishment, evaluation and review”. A true and correct copy of the ‘817 Patent is attached as Exhibit A. ELC is the assignee of all rights, title, and interest in and to the ‘817 Patent and possesses all rights of recovery under the ‘817 Patent, including the right to exclude and to enforce, sue and recover damages for past and future infringement.
14. The ‘817 Patent is valid and enforceable.
15. Plaintiff ELC makes, uses, sells, and/or offers to sell its employment compliance products and/or services related to compensation compliance, hiring compliance, promotion compliance, termination compliance, and affirmative action plans.
16. Defendant ESSI makes, uses, sells, and/or offers to sell employment compliance products within the United States, including EmpowerTime, EmpowerPay, EmpowerMe, Empower HR/Pay, EmpowerWFM, EmpowerTax and EmpowerTalent,

together with any related services, that are covered by one or more claims of the '817 Patent.

17. On information and belief, Defendant HRSmart makes, uses, sells and/or offers to sell employment compliance products within the United States, including HRSmart's SmartPass and Unified Talent Management product and related modules therein. On information and belief, HRSmart's Unified Talent Management product or one or more of its components are partially or wholly integrated with and/or support at least one of ESSI's EmpowerTime, EmpowerPay, EmpowerMe, Empower HR/Pay, EmpowerWFM, EmpowerTax and EmpowerTalent products, together with any related services, that are covered by one or more claims of the '817 Patent.
18. Defendant ESSI has actual knowledge of the '817 Patent and that at least one of its products, including ESSI's EmpowerTime, EmpowerPay, EmpowerMe, Empower HR/Pay, EmpowerWFM, EmpowerTax and EmpowerTalent, together with any related services, infringe the '817 Patent since at least the service of this proceeding upon ESSI. Defendant ESSI has continued to advertise, market and distribute advertisements for its infringing employment compliance products, including ESSI's EmpowerTime, EmpowerPay, EmpowerMe, Empower HR/Pay, EmpowerWFM, EmpowerTax and EmpowerTalent, together with any related services, after being served with notice of these proceedings.

COUNT ONE – PATENT INFRINGEMENT BY ESSI

19. ELC incorporates by reference the paragraphs 1-18 above as if fully set forth at length.
20. Defendant ESSI directly infringes, literally or under the doctrine of equivalents, and has infringed one or more claims of the '817 Patent, by, without authority, making, using,

importing, offering to sell, or selling products and related services, including at least one of EmpowerTime, EmpowerPay, EmpowerMe, Empower HR/Pay, EmpowerWFM, EmpowerTax and EmpowerTalent, incorporating the methods, systems and technology of the '817 Patent within the United States.

21. Defendant ESSI's infringement has damaged ELC and will continue to cause severe and irreparable damage as long as Defendant ESSI's infringing activities continue.

COUNT TWO – PATENT INFRINGEMENT BY HRSMART

22. ELC incorporates by reference the paragraphs 1-21 above as if fully set forth at length.
23. Defendant HRSmart directly infringes, literally or under the doctrine of equivalents, and has infringed one or more claims of the '817 Patent, by, without authority, making, using, importing, offering to sell, or selling products and related services, including HRSmart's SmartPass, and Unified Talent Management products alone or as partially or wholly integrated and/or supporting at least one of ESSI's EmpowerTime, EmpowerPay, EmpowerMe, Empower HR/Pay, EmpowerWFM, EmpowerTax and EmpowerTalent products, incorporating the methods, systems and technology of the '817 Patent within the United States.
24. Defendant HRSmart's infringement has damaged ELC and will continue to cause severe and irreparable damage as long as Defendant HRSmart's infringing activities continue.

REMEDIES

25. As a direct and proximate consequence of the acts and practices of ESSI and HRSmart in infringing one or more claims of the '817 Patent, ELC has been damaged in an amount to be determined at trial and will continue to be damaged in its

business and property rights as a result of the infringing activities of Defendants ESSI and HRSmart, unless such activities are enjoined by this Court. Pursuant to 35 U.S.C. § 284, ELC is entitled to damages adequate to compensate for the infringement, including, *inter alia*, lost profits and/or a reasonable royalty.

26. By reason of its infringing acts and practices, Defendants ESSI and HRSmart are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to ELC for which there is no adequate remedy at law, and for which ELC is entitled to injunctive relief under 35 U.S.C. § 283. ELC, therefore, requests a permanent injunction prohibiting Defendants ESSI and HRSmart, their directors, officers, employees, agents, parents, subsidiaries, affiliates, and anyone else in active concert or participation with them from infringement, inducement to infringe, or contributory infringement of the '817 Patent, including the making, manufacture, use, sale, offer for sale, distribution, or promotion of products and/or services falling within the scope of the claims of the '817 Patent.

27. To the extent that facts learned during the pendency of this case show that the infringement of Defendants ESSI and/or HRSmart are willful and deliberate, ELC reserves the right to amend this complaint and request such a finding and seek appropriate relief at time of trial.

COSTS, INTEREST AND ATTORNEYS' FEES

28. If it be determined that this case presents exceptional circumstances within the meaning of 35 U.S.C. § 285, ELC requests the Court award it all reasonable attorney's fees and costs incurred in this litigation and pre-judgment and post-judgment interest pursuant to 35 U.S.C. §§ 284 and 285.

DEMAND FOR A JURY TRIAL

29. ELC hereby demands a trial by jury, under Rule 38 of the Federal Rules of Civil Procedure, for all issues triable of right by a jury.

PRAYER

WHEREFORE, Plaintiff ELC respectfully requests the following relief:

- a. A judgment that Defendant ESSI has infringed the ‘817 Patent;
- b. A judgment that Defendant HRSmart has infringed the ‘817 Patent;
- c. A judgment and order permanently enjoining Defendants ESSI and HRSmart and their directors, officers, employees, agents, parents, subsidiaries, affiliates, and all persons in active concert or participation with them from infringing the ‘817 Patent, including the making, manufacture, importation, use, sale, offer for sale, distribution, or promotion of products and/or services falling within the scope of the claims of the ‘817 Patent pursuant to 35 U.S.C. § 283;
- d. A judgment and order requiring Defendants ESSI and HRSmart to pay ELC damages sufficient to compensate it for the infringement of the ‘817 Patent, in an amount not less than ELC’s lost profits and/or a reasonable royalty and interest and costs, pursuant to 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of final judgment with an accounting, as needed;
- e. A judgment and order awarding enhanced damages, pursuant to 35

U.S.C. § 284, to the extent that the acts of infringement of the '817 Patent by Defendants ESSI and/or HRSmart are determined to be willful;

- f. An award of prejudgment interest, pursuant to 35 U.S.C. § 284, from the date of each act of infringement of the '817 Patent by Defendants ESSI and HRSmart to the day on which judgment for damages is entered, and a further award of post-judgment interest, pursuant to 28 U.S.C. § 1961, continuing until such judgment is paid;
- g. An award of all costs and reasonable attorney's fees against Defendants ESSI and HRSmart, pursuant to 35 U.S.C. §§ 284 and 285, based on their infringement of the '817 Patent; and,
- h. Such other and further relief to which ELC may be entitled.

Dated: March 3, 2014.

Respectfully submitted,

 /s/ John Reenan

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**ATTORNEYS FOR PLAINTIFF
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CERTIFICATE OF SERVICE

On March 3, 2014, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I further certify that I have served all counsel of record, listed below, electronically or by another means authorized by Fed. R. Civ. P. 5(b)(2).

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