

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

VOICEFILL, LLC,

Plaintiff,

v.

WEST INTERACTIVE CORPORATION, WEST DIRECT  
INC., WEST DIRECT, LLC, WEST DIRECT II INC. and  
WEST CORPORATION,

Defendants.

Case No.

**COMPLAINT AND DEMAND  
FOR JURY TRIAL**

This is an action for breach of contract and patent infringement in which VoiceFill, LLC (“VoiceFill” or “Plaintiff”) makes the following allegations against West Interactive Corporation, West Direct, Inc., West Direct, LLC, West Direct II, Inc. and West Corporation (collectively, “Defendants”):

**PARTIES**

1. Plaintiff VoiceFill is a California limited liability company with its principal place of business at 547 South Marengo Ave., Suite 104, Pasadena, California 91101.

2. On information and belief, West Interactive Corporation is a Delaware corporation with its principal place of business at 11808 Miracle Hills Dr., Omaha, Nebraska 68154. West Interactive Corporation may be served through its registered agent, CSC-Lawyers Incorporating Service Company, 233 S. 13<sup>th</sup> St., Ste. 1900, Lincoln, Nebraska 68508.

3. On information and belief, West Direct, Inc. is a Delaware corporation with its principal place of business at 11808 Miracle Hills Dr., Omaha, Nebraska 68154. West Direct

may be served through its registered agent, CDC-Lawyers Incorporating Service Company, 233 S. 13<sup>th</sup> St., Ste. 1900, Lincoln, Nebraska 68508.

4. On information and belief, West Direct LLC is a Delaware corporation with its principal place of business at 11808 Miracle Hills Dr., Omaha, Nebraska 68154. West Direct LLC may be served through its registered agent, CDC-Lawyers Incorporating Service Company, 233 S. 13<sup>th</sup> St., Ste. 1900, Lincoln, Nebraska 68508.

5. On information and belief, West Direct II Inc., is an Arizona corporation with its principal place of business at 11808 Miracle Hills Dr., Omaha, Nebraska 68154. West Direct II Inc. may be served through its registered agent, CDC-Lawyers Incorporating Service Company, 233 S. 13<sup>th</sup> St., Ste. 1900, Lincoln, Nebraska 68508.

6. On information and belief, West Corporation is a Delaware corporation with its principal place of business at 11808 Miracle Hills Dr., Omaha, Nebraska 68154. West Corporation may be served through its registered agent, CSC-Lawyers Incorporating Service Company, 233 S. 13<sup>th</sup> St., Ste. 1900, Lincoln, Nebraska 68508.

#### **JURISDICTION AND VENUE**

7. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) and supplemental jurisdiction pursuant to § 1367.

8. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendants reside and have transacted business in this district, and have committed and/or induced acts of patent infringement in this district.

## SUMMARY OF COUNTS AGAINST DEFENDANTS

9. On information and belief, Defendant West Interactive Corporation (“West Interactive”) and its affiliates have breached the provisions of an agreement to which they are bound via the acquisition of Tuvox, Inc., which had previously acquired all or substantially all of the assets of NetByTel, Inc. This agreement prevented NetByTel, Inc.—and any subsequent entities resulting from merger, reorganization, or sale of its assets—from developing any software, systems, or products that would compete with technology covered by United States Patent No. 6,738,740 (“the ‘740 Patent”), a true and correct copy of which is attached hereto as Exhibit A, which is now owned by Plaintiff.

10. On information and belief, Defendants are liable for infringement of the ‘740 Patent, which is entitled “Speech Recognition System for Interactively Gathering and Storing Verbal Information to Generate Documents,” which is now owned—including all rights to recover for past and future acts of infringement—by Plaintiff.

## FACTS

11. On June 30th, 2004, Vast, Inc. (“Vast”) entered into an agreement with NetByTel, Inc. (“NetByTel”), which was a Delaware corporation with offices located at 1141 South Rogers Circle, Ste. 9, Boca Raton, Florida, 33487.

12. Vast was founded by Mr. Kenneth Barash, the inventor of the ‘740 Patent, on August 1, 2000.

13. The agreement is entitled “NetByTel, Inc. Master Services Agreement” (“NetByTel Agreement”), a true and correct copy of which is attached hereto as Exhibit B.

14. In Section 8.1, the NetByTel Agreement provides:

8.1 Intellectual Property. The Parties acknowledge that all rights, title, and interest in and to any software programs, scripts, or processes

previously developed by either respective party shall be owned by the respective party including any subsequently and independently developed software programs, scripts, and processes and their associated modifications, enhancements, or derivative works, and shall not be considered work made for hire by either Party; provided, however, that any such any software programs, scripts, or processes developed by either party may not incorporate any Trade Secrets (as defined in Section 10.1) or Confidential Information (as defined in Section 10.2) of the other party except as provided in this Agreement. Except as specifically provided in this Agreement, this Agreement does not grant Client any intellectual property rights in the software, equipment, or Services provided hereunder. Additionally, this Agreement does not grant NetByTel any rights to Client's Patent 6,738,740 B1 issued by the U.S. Patent and Trademark office on May 18, 2004 ("Client's Patent"). ***NetByTel agrees not to develop nor offer to develop, directly or indirectly, and shall restrict its employees from developing any software, system(s) or product(s) for telephonically determining satisfaction for loan applications which would compete with the VA Streamline and Traditional loan applications in English and any other foreign languages or any other products or services covered under Client's Patent and developed by NetByTel for Client for any entity for the term of Client's Patent.*** NetByTel and all associated logos and trademarks are owned by NetByTel, Inc. and this Agreement does not grant any right to use any of the logos or trademarks of NetByTel except in connection with the use of the software, equipment, and Services, and except as otherwise provided pursuant to Section 16.2 hereof. (emphasis added)

15. In Section 15.1, the NetByTel Agreement provides:

17.9 No Assignment: Neither party may assign or transfer this Agreement or any obligation incurred hereunder ***except in connection with or as a result of any merger, reorganization, consolidation, or sale of all or substantially all of its assets*** without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided that the acquiring company assumes in writing all of the obligations of the seller. Any attempt to do so in contravention of this Section shall be void and of no force and effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. (emphasis added)

16. Under the NetByTel Agreement, Vast and NetByTel worked to develop and commercialize several voice to text applications.

17. In or around March 2005, NetByTel was sold, or substantially all of NetByTel assets were sold, to Tuvox, Inc. ("Tuvox"). Tuvox officially terminated the NetByTel Agreement on April 1, 2009.

18. On or about July 22, 2010, West Interactive acquired TuVox.

19. On November 4, 2011, Plaintiff acquired substantially all of the assets of Vast, Inc., including the remaining rights and obligations of the NetByTel Agreement.

**COUNT I  
BREACH OF CONTRACT**

20. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1-19 herein.

21. Pursuant to the terms of the NetByTel Agreement, West Interactive remains obligated to not develop nor offer to develop, directly or indirectly, and shall restrict its employees from developing any software, system(s) or product(s) for telephonically determining satisfaction for loan applications which would compete with traditional loan applications in English and any other foreign languages or any other products or services covered under the '740 Patent and developed by NetByTel for Vast for any entity for the term of the '740 Patent.

22. In violation of the NetByTel Agreement, West Interactive has provided, and continues to develop and/or offer to develop, directly or indirectly, and/or fails to restrict its employees from developing software, system(s) or product(s) for telephonically determining satisfaction for loan applications which would compete with traditional loan applications in English and any other foreign languages or any other products or services covered under the '740 Patent and developed by NetByTel for Vast for any entity for the term of the '740 Patent.

**COUNT II**  
**INFRINGEMENT OF U.S. PATENT NO. 6,738,740**

23. VoiceFill is the owner by assignment of United States Patent No. 6,738,740 entitled "Speech Recognition System for Interactively Gathering and Storing Verbal Information to Generate Documents," including all rights to recover for past and future acts of infringement. The '740 Patent issued on May 18, 2004. A true and correct copy of the '740 Patent is attached as Exhibit A.

24. On information and belief, Defendants have been and now are directly and willfully infringing the '740 Patent in this judicial district, and elsewhere in the United States. Acts of infringement by Defendants include, without limitation, making, using, offering for sale, and/or selling within the United States, and/or importing into the United States, at least a device that operates as a speech recognition system configured to interactively gather and store information to generate documents, including but not limited to Defendants' interactive voice response (IVR) and speech application, infringing one or more claims of the '740 Patent. Defendants are thus liable for infringement of the '740 Patent under 35 U.S.C. § 271. In addition, given Defendants' knowledge of the '740 Patent, their infringement of the '740 Patent, and their contractual duties not to infringe the '740 Patent, among other things, Defendants are engaging in willful infringement of the '740 Patent and are also liable for enhanced damages under 35 U.S.C. § 284.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter:

1. A judgment in favor of Plaintiff that Defendants have breached the NetByTel Agreement.

2. A judgment in favor of Plaintiff that Defendants have infringed, directly, and/or indirectly, by way of inducing and/or contributing to the infringement of the '740 Patent;

3. An award to Plaintiff for enhanced damages resulting from at least the knowing, deliberate, and willful nature of West Interactive's prohibited conduct with notice being made as of the date of the NetByTel, Inc. Master Services Agreement, as provided under 35 U.S.C. § 284;

4. A judgment and order requiring Defendants to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for Defendants' infringement of the '740 Patent as provided under 35 U.S.C. § 284;

5. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys' fees; and

6. Any and all other relief to which Plaintiff may show itself to be entitled.

#### **DEMAND FOR JURY TRIAL**

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of any issues so triable by right in Omaha, Nebraska.

December 9, 2011

/s/ Patrick M. Flood

Patrick M. Flood, #19042

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