

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

AUDIOEYE, INC.,

Plaintiff,

v.

ACCESSIBE LTD.,

Defendant.

Case No. 1:20-cv-924

COMPLAINT

Plaintiff AudioEye, Inc. (“AudioEye”) hereby complains of Defendant accessiBe Ltd. (“accessiBe”), and alleges as follows:

I. THE PARTIES

1. Plaintiff AudioEye is a Delaware corporation having its principal place of business at 5210 E. Williams Circle, Suite 750, Tucson, AZ 85711.
2. Upon information and belief, Defendant accessiBe is a company registered in Israel under Registration No. 51-585530-2, having a place of business at Ha-Khilazon St 6, Bnei Brak, Israel. Upon information and belief, accessiBe has no offices in the United States.

II. JURISDICTION AND VENUE

3. This civil action includes claims for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 100, *et seq.*, more particularly, 35 U.S.C. §§ 271 and 281
4. This Court has subject matter jurisdiction over the claims for patent infringement pursuant to at least 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over accessiBe because accessiBe has committed some of the acts of patent infringement complained of herein in this Judicial District. This includes the acts of patent infringement committed in connection with several customers with primary offices located in this Judicial District, including, upon information and belief, BigCommerce Pty. Ltd., with a primary office located in Austin, TX; CDK Global, Inc., with an office in Austin, TX; and Volusion, Inc., with a primary office located in Austin, TX.

6. Venue is proper in this Judicial District pursuant to at least 28 U.S.C. § 1391(c)(3) because accessiBe is a foreign corporation and subject to suit in any Judicial District. *See also Brunette Machine Works, Ltd. v. Kockum Industries, Inc.*, 406 U.S. 706, 709-710 (1972).

III. STATEMENT OF THE CASE

7. This action seeks relief for the infringement of AudioEye's patents by accessiBe.

IV. STATEMENT OF FACTS

8. Millions of Americans have disabilities, such as vision or hearing impairments, that affect their ability to access information and content through the internet. Most websites, including critical destinations such as workplace applications, online commerce, and information resources, are not fully accessible to disabled individuals.

9. Over the course of many years, AudioEye developed software tools and processes that help website owners modify and improve their websites to make them more accessible to disabled individuals. AudioEye's technology has made tens of thousands of websites more accessible to internet users all over the world.

10. Beginning in 2016, AudioEye filed applications with the United States Patent & Trademark Office to protect its web accessibility technology. AudioEye has been awarded several patents on its novel technology.

11. AudioEye's common stock trades on the Nasdaq stock exchange.

12. Last year, in 2019, accessiBe began offering software products and services that it claimed would make websites more accessible to disabled individuals (the “infringing web accessibility tool”). accessiBe’s products and services take advantage of AudioEye’s novel accessibility technology and infringe several of AudioEye’s patents.

V. AUDIOEYE’S PATENTS

13. AudioEye is the owner by assignment of all right, title, and interest in and to U.S. Patent No. 10,423,709 entitled “Systems, Devices, and Methods for Automated and Programmatic Creation and Deployment of Remediations to Non-Compliant Web Pages or User Interfaces” (“the ’709 patent”), which the United States Patent and Trademark Office lawfully and duly issued on September 24, 2019. A true and correct copy of the ’709 patent is included as Exhibit 1.

14. AudioEye is the owner by assignment of all right, title, and interest in and to U.S. Patent No. 10,444,934 entitled “Modular Systems and Methods for Selectively Enabling Cloud-Based Assistive Technologies” (“the ’934 patent”), which the United States Patent and Trademark Office lawfully and duly issued on October 15, 2019. A true and correct copy of the ’934 patent is included as Exhibit 2.

15. AudioEye is the owner by assignment of all right, title, and interest in and to U.S. Patent No. 10,762,280 entitled “Systems, Devices, and Methods for Facilitating Website Remediation and Promoting Assistive Technologies” (“the ’280 patent”), which the United States Patent and Trademark Office lawfully and duly issued on September 1, 2020. A true and correct copy of the ’280 patent is included as Exhibit 3.

VI. FIRST CAUSE OF ACTION

(INFRINGEMENT OF U.S. PATENT NO. 10,423,709)

16. AudioEye hereby realleges and incorporates by reference the allegations set forth in the above paragraphs.

17. Upon information and belief, accessiBe has infringed at least Claim 19 of the '709 patent under at least 35 U.S.C. § 271(a), (b), (c), and (g).

18. For example, upon information and belief, accessiBe has performed each of the limitations of Claim 19 of the '709 patent using a computer system in the United States. Using its infringing web accessibility tool, accessiBe performs in the United States the recited steps of a computer implemented method for identifying structural patterns across a plurality of web pages and determining a set of remediations that can be applied collectively to the plurality of web pages, as set forth in more detail in Exhibit 4.

19. Upon information and belief, accessiBe has knowledge of the '709 patent. On September 4, 2020, before this Complaint was filed, AudioEye sent a letter to accessiBe, identifying the '709 patent and explaining how accessiBe was infringing the patent. accessiBe also has knowledge of the '709 patent based on the filing of this Complaint.

20. Further, to the extent that AudioEye asserts only method claims of the '709 Patent, like Claim 19 in Exhibit 4, AudioEye is entitled to recover past damages and has complied with 35 U.S.C. § 287.

21. Upon information and belief, accessiBe has actively induced others to infringe at least Claim 19 of the '709 patent by marketing and selling to its customers, including customers in this Judicial District, its infringing web accessibility tool, knowing and intending that its customers use it in a manner that infringes at least Claim 19 of the '709 patent. For example,

using the demonstration videos mentioned in Exhibit 4, as well as other training materials, accessiBe instructs and teaches its customers how to use its tool to infringe the '709 patent. accessiBe's acts constitute infringement of the '709 patent in violation of 35 U.S.C. § 271(b).

22. Upon information and belief, accessiBe's acts constitute contributory infringement of the '709 patent in violation of 35 U.S.C. § 271(c). Upon information and belief, accessiBe contributorily infringes because, for example, accessiBe offers to sell, sells, and/or imports into the United States its infringing web accessibility tool, which is not a staple article or commodity of commerce suitable for non-infringing use and which is used in performing the processes covered by at least Claim 19 of the '709 patent, and accessiBe knows its tool is especially made or adapted for use in an infringement of the '709 patent.

23. Upon information and belief, accessiBe's acts constitute infringement of the '709 patent in violation of 35 U.S.C. § 271(g). Upon information and belief, accessiBe imports into the United States or offers to sell to potential customers, sells to customers, and/or uses in the United States a product, such as a modified website, webpage, or HTML or DOM code for a website, that was made using its infringing web accessibility tool outside the United States (in, for example, Israel) by the processes covered by at least Claim 19 of the '709 patent. accessiBe states on its website, for example, that it has servers in the United States and Europe.

24. accessiBe's infringement of the '709 patent is willful, deliberate, and intentional by continuing its acts of infringement after becoming aware of the '709 patent and its infringement thereof, thus acting in reckless disregard of AudioEye's patent rights.

25. Because of accessiBe's infringement of the '709 patent, AudioEye has suffered and will continue to suffer irreparable harm and injury, including monetary damages in an amount to be determined at trial.

26. Upon information and belief, unless enjoined, accessiBe, and/or others acting on behalf of accessiBe, will continue their infringing acts, thereby causing additional irreparable injury to AudioEye for which there is no adequate remedy at law.

VII. SECOND CAUSE OF ACTION

(INFRINGEMENT OF U.S. PATENT NO. 10,444,934)

27. AudioEye hereby realleges and incorporates by reference the allegations set forth in the above paragraphs.

28. Upon information and belief, accessiBe has infringed at least Claims 1 and 11 of the '934 patent under at least 35 U.S.C. § 271(a), (b), (c), and (g).

29. For example, upon information and belief, accessiBe has performed each of the limitations of Claim 1 of the '934 patent using a computer system in the United States. Using its infringing web accessibility tool, accessiBe performs in the United States the recited steps of a computer implemented method of programmatically assigning descriptive alt text to an element on a web page to provide an audio description of the element, the web page having an associated DOM code, as set forth in more detail in Exhibit 5.

30. Upon information and belief, accessiBe has knowledge of the '934 patent. On September 4, 2020, before this Complaint was filed, AudioEye sent a letter to accessiBe, identifying the '934 patent and explaining how accessiBe was infringing the patent. accessiBe also has knowledge of the '934 patent based on the filing of this Complaint.

31. Further, because the '934 patent's claims are all method claims, AudioEye is entitled to recover past damages and has complied with 35 U.S.C. § 287.

32. Upon information and belief, accessiBe has actively induced others to infringe at least Claims 1 and 11 of the '934 patent by marketing and selling to its customers, including

customers in this Judicial District, its infringing web accessibility tool, knowing and intending that its customers use it in a manner that infringes at least Claims 1 and 11 of the '934 patent. For example, using the demonstration videos mentioned in Exhibit 5, as well as other training materials, accessiBe instructs and teaches its customers how to use its tool to infringe the '934 patent. accessiBe's acts constitute infringement of the '934 patent in violation of 35 U.S.C. § 271(b).

33. Upon information and belief, accessiBe's acts constitute contributory infringement of the '934 patent in violation of 35 U.S.C. § 271(c). Upon information and belief, accessiBe contributorily infringes because, for example, accessiBe offers to sell, sells, and/or imports into the United States its infringing web accessibility tool, which is not a staple article or commodity of commerce suitable for non-infringing use and which is used in performing the processes covered by at least Claims 1 and 11 of the '934 patent, and accessiBe knows its tool is especially made or adapted for use in an infringement of the '934 patent.

34. Upon information and belief, accessiBe's acts constitute infringement of the '934 patent in violation of 35 U.S.C. § 271(g). Upon information and belief, accessiBe imports into the United States or offers to sell to potential customers, sells to customers, and/or uses in the United States a product, such as a modified website, webpage, or HTML or DOM code for a website, that was made using its infringing web accessibility tool outside the United States (in, for example, Israel) by the processes covered by at least Claims 1 and 11 of the '934 patent. accessiBe states on its website, for example, that it has servers in the United States and Europe.

35. accessiBe's infringement of the '934 patent is willful, deliberate, and intentional by continuing its acts of infringement after becoming aware of the '934 patent and its infringement thereof, thus acting in reckless disregard of AudioEye's patent rights.

36. Because of accessiBe's infringement of the '934 patent, AudioEye has suffered and will continue to suffer irreparable harm and injury, including monetary damages in an amount to be determined at trial.

37. Upon information and belief, unless enjoined, accessiBe, and/or others acting on behalf of accessiBe, will continue their infringing acts, thereby causing additional irreparable injury to AudioEye for which there is no adequate remedy at law.

VIII. THIRD CAUSE OF ACTION

(INFRINGEMENT OF U.S. PATENT NO. 10,762,280)

38. AudioEye hereby realleges and incorporates by reference the allegations set forth in the above paragraphs.

39. Upon information and belief, accessiBe has infringed at least Claims 1 and 15 of the '280 patent under at least 35 U.S.C. § 271(a), (b), and (c). Upon information and belief, accessiBe has directly infringed at least Claims 1 and 15 of the '280 patent through the manufacture, use, sale, offer for sale, and/or importation into the United States of its infringing web accessibility tool. For example, upon information and belief, accessiBe's infringing web accessibility tool includes all of the limitations of Claim 1 of the '280 patent as set forth in more detail in Exhibit 6.

40. Upon information and belief, accessiBe has knowledge of the '280 patent. On September 4, 2020, before the filing of this Complaint, AudioEye sent a letter to accessiBe, identifying the '280 patent and explaining how accessiBe was infringing the patent. accessiBe also has knowledge of the '280 patent based on the filing of this Complaint.

41. Upon information and belief, accessiBe has actively induced others to infringe at least Claims 1 and 15 of the '280 patent by marketing and selling to its customers, including

customers in this Judicial District, its infringing web accessibility tool, knowing and intending that its customers use it in manner that infringes at least Claims 1 and 15 of the '280 patent. For example, using the demonstration videos mentioned in Exhibit 6, as well as other training materials, accessiBe instructs and teaches its customers how to use its tool to infringe at least Claims 1 and 15 of the '280 patent. accessiBe's acts constitute infringement of the '280 patent in violation of 35 U.S.C. § 271(b).

42. Upon information and belief, accessiBe's acts constitute contributory infringement of the '280 patent in violation of 35 U.S.C. § 271(c). Upon information and belief, accessiBe contributorily infringes because, for example, accessiBe offers to sell, sells, and/or imports into the United States components of its infringing web accessibility tool, which are not a staple article or commodity of commerce suitable for non-infringing use and which accessiBe knows are especially made or adapted for use in an infringement of at least Claims 1 and 15 of the '280 patent.

43. Upon information and belief, accessiBe has also infringed at least Claim 19 of the '280 patent under at least 35 U.S.C. § 271(a), (b), (c), and (g).

44. For example, upon information and belief, accessiBe has performed each of the limitations of Claim 19 of the '280 patent using a computer system in the United States. Using its infringing web accessibility tool, accessiBe performs in the United States the recited steps of a computer implemented method for identifying structural patterns across a plurality of web pages and determining a set of remediations that can be applied collectively to the plurality of web pages, as set forth in more detail in Exhibit 6.

45. Upon information and belief, accessiBe has actively induced others to infringe at least Claim 19 of the '280 patent by marketing and selling to its customers, including customers

in this Judicial District, its infringing web accessibility tool, knowing and intending that its customers use it in a manner that infringes at least Claim 19 of the '280 patent. For example, using the demonstration videos mentioned in Exhibit 6, as well as other training materials, accessiBe instructs and teaches its customers how to use its tool to infringe at least Claim 19 of the '280 patent. accessiBe's acts constitute infringement of the '280 patent in violation of 35 U.S.C. § 271(b).

46. Upon information and belief, accessiBe's acts constitute contributory infringement of the '280 patent in violation of 35 U.S.C. § 271(c). Upon information and belief, accessiBe contributorily infringes because, for example, accessiBe offers to sell, sells, and/or imports into the United States its infringing web accessibility tool, which is not a staple article or commodity of commerce suitable for non-infringing use and which is used in performing the processes covered by at least Claim 19 of the '280 patent, and accessiBe knows its tool is especially made or adapted for use in an infringement of the '280 patent.

47. Upon information and belief, accessiBe's acts constitute infringement of the '280 patent in violation of 35 U.S.C. § 271(g). Upon information and belief, accessiBe imports into the United States or offers to sell to potential customers, sells to customers, and/or uses in the United States a product, such as a modified website, webpage, or HTML or DOM code for a website, that was made using its infringing web accessibility tool outside the United States (in, for example, Israel) by the processes covered by at least Claim 19 of the '280 patent. accessiBe states on its website, for example, that it has servers in the United States and Europe.

48. accessiBe's infringement of the '280 patent is willful, deliberate, and intentional by continuing its acts of infringement after becoming aware of the '280 patent and its infringement thereof, thus acting in reckless disregard of AudioEye's patent rights.

49. Because of accessiBe's infringement of the '280 patent, AudioEye has suffered and will continue to suffer irreparable harm and injury, including monetary damages in an amount to be determined at trial.

50. Upon information and belief, unless enjoined, accessiBe, and/or others acting on behalf of accessiBe, will continue their infringing acts, thereby causing additional irreparable injury to AudioEye for which there is no adequate remedy at law.

IX. JURY DEMAN

51. AudioEye hereby demands a jury on all issues so triable.

X. PRAYER FOR RELIEF

WHEREFORE, AudioEye prays for judgment in its favor against accessiBe for the following relief:

- A. Pursuant to 35 U.S.C. § 271, a determination the accessiBe and its officers, agents, servants, employees, attorneys, and all others in active concert and/or participation with it have infringed literally and/or under the doctrine of equivalents each of the '709, '934, and '280 patents;
- B. Pursuant to 35 U.S.C. § 283, an injunction enjoining accessiBe and its officers, agents, servants, employees, attorneys, and all others in active concert and/or participation with it from infringing the '709, '934, and '280 patents;
- C. Pursuant to 35 U.S.C. § 284, an award compensating AudioEye for accessiBe's infringement of the '709, '934, and '280 patents;
- D. Pursuant to 35 U.S.C. § 284, an award increasing damages up to three times the amount found or assessed by the jury for accessiBe's infringement of the '709,

'934, and '280 patents in view of the willful and deliberate nature of the infringement;

- E. Pursuant to 35 U.S.C. § 285, a finding that this is an exceptional case, and an award of AudioEye's reasonable attorneys' fees and non-taxable costs; and
- F. Any other relief that this Court may deem just.

September 4, 2020

Respectfully submitted,

By: /s/ Mark T. Garrett

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