**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DYNAMIC NUTRITION SOLUTIONS LLC, Plaintiff, v. SECRET INDUSTRIES PTY. LTD. d/b/a FATSECRET, Defendant.	**Civil Action No. _____** **JURY TRIAL DEMANDED**

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Dynamic Nutrition Solutions LLC ("DNS" or "Plaintiff"), for its Complaint against Defendant Secret Industries Pty. Ltd. d/b/a FatSecret, ("FatSecret" or "Defendant") alleges the following:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq*.

THE PARTIES

2. Plaintiff is a limited liability company organized under the laws of the State of Texas with a place of business at 815 Brazos Street, Suite 500, Austin, Texas 78701.

3. Upon information and belief, FatSecret is a company organized and existing under the laws of Australia, with a principal place of business at L1 1 Cromwell St., Caufield North, Victoria 3161, Australia and can be served at that address. Upon information and belief, FatSecret sells and offers to sell products and services throughout the United States, including in this judicial district, and introduces products and services into the stream of commerce and that

incorporate infringing technology knowing that they would be sold in this judicial district and elsewhere in the United States.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the Patent Laws of the United States, Title 35 of the United States Code.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district under 28 U.S.C. § 1391(b), (c), (d) and/or 1400(b). On information and belief, Defendant conducts business in this District, the claims alleged in this Complaint arise in this District, and the acts of infringement have taken place and are continuing to take place in this District.

7. On information and belief, Defendant is subject to this Court's general and specific personal jurisdiction because Defendant has sufficient minimum contacts within the State of Texas and this District, pursuant to due process and/or the Texas Long Arm Statute because Defendant purposefully availed itself of the privileges of conducting business in the State of Texas and in this District, because Defendant regularly conducts and solicits business within the State of Texas and within this District, and because Plaintiff's causes of action arise directly from Defendant's business contacts and other activities in the State of Texas and this District.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,817,863

8. The allegations set forth in the foregoing paragraphs 1 through 7 are incorporated into this First Claim for Relief.

9. On November 16, 2004, U.S. Patent No. 6,817,863 ("the '863 patent"), entitled "Computer Program, Method, and System for Monitoring Nutrition Content of Consumables and

for Facilitating Menu Planning," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '863 patent is attached as Exhibit 1.

10. The inventions of the '863 patent resolve technical problems related to the use of an interactive database to dynamically present information to consumers regarding food consumption and related data. For example, the inventions allow parties to customize the database with nutritional content of foods, thereby modifying how the information stored in the database is presented to a particular user, enabling the user to adapt the program to more personally reflect eating habits and preferences.

11. The claims of the '863 patent do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claims of the '863 patent recite one or more inventive concepts that are rooted in computerized network and database technology, and overcome problems specifically arising in the realm of those technologies.

12. The claims of the '863 patent recite an invention that is not merely the routine or conventional use of network and/or database technology. Instead, the invention makes use of an interactive database that can be customized to reflect the needs of each particular user. The '863 patent claims thus specify how network and database technology is manipulated to yield a desired result.

13. The technology claimed in the '863 patent does not preempt all ways of using networks or databases, nor preempt the use of all such technologies, nor preempt any other well-known or prior art technology.

14. Accordingly, each claim of the '863 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

15. Plaintiff is the assignee and owner of the right, title and interest in and to the '863 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

16. Upon information and belief, and further based on internal use and testing on Apple and Android devices, Defendant has and continues to directly infringe, literally or under the doctrine of equivalents, at least claims 1, 2, and 13 of the '863 patent by making, using, selling, importing and/or providing and causing to be used products including, but not limited to, the FatSecret Calorie Counter app, which practices an interactive nutrition database that dynamically presents information to consumers regarding food consumption and related data; allows parties to customize the database with nutritional content of foods, thereby modifying how the information stored in the database is presented to a particular user; and enables the user to adapt the program to more personally reflect eating habits and preferences (the "'863 Accused Instrumentalities").

17. In particular, claim 1 of the '863 patent recites a computer program that utilizes a combination of code segments, a computer-readable memory, and a processor to provide the nutritional content information of consumables. One of the code segments receives and stores nutrition input information and associates this information with a calendar date. Another one of the code segments generates an interactive display screen that includes one or more lists of consumables with related nutritional information and a summary section of past consumption of consumables.

18.   The '863 Accused Instrumentalities infringe claim 1 of the '863 patent. Upon downloading the app from the Apple App Store or Google Play, users of the '863 Accused Instrumentalities are provided access to the invention recited in claim 1.

19.   FatSecret provides, among other computer implemented programs, FatSecret's "Calorie Counter" application program. The Calorie Counter app comprises code stored in a computer-readable memory (one or more server/client computers and/or more mobile devices) and executable by a processor to provide nutrition content information related to consumables, such as consumables selected by a user of the Calorie Counter app program. (*See, e.g.*, http://blog.fatsecret.com/; https://www.fatsecret.com/connected; https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.)

20.   FatSecret's Calorie Counter app includes a code segment operable to receive and store an input related to consumption of consumables, and to associate the input with a calendar date. The Calorie Counter app includes code to receive an input related to consumption of consumables, such as selection of a given consumable via a touch selection on a mobile device. The Calorie Counter app associates the input (the selected consumable(s)) with a calendar date.

21.   The Calorie Counter app includes a code segment operable to generate an interactive display screen, wherein the interactive display screen includes one or more lists of consumables and related nutrition content information, and a summary section of past consumption of consumables. (*See, e.g.*, http://blog.fatsecret.com/.)

22.   The Calorie Counter app includes a code segment operable to generate an interactive display screen, wherein the interactive display screen also includes a summary section of past consumption of consumables.

23.   Claim 2 of the '863 patent recites the computer program of claim 1 that also includes a code segment that generates a report that summarizes the nutritional input information associated with the calendar date.

24.   The '863 Accused Instrumentalities infringe claim 2 of the '863 patent.

25.   The Calorie Counter app further includes a code segment operable to generate a report summarizing the input associated with the calendar date. For example, the Calorie Counter app includes code to generate a report summarizing the calories associated with selected consumables input via the Calorie Counter app for a particular calendar date.

26.   Claim 13 of the '863 patent recites a hand-held apparatus that provides nutrition content information related to consumables. The apparatus embodies a housing that contains the following: a computer-readable memory; a stored combination of code segments; a processor; an interactive output display screen generated by the combination of code segments, which presents one or more lists of consumables and their related nutrition information; and an input device coupled to the processor that allows a user to select a consumable from the interactive display screen and store date-associated data about that consumable to the memory.

27.   On information and belief, the '863 Accused Instrumentalities infringe claim 13 of the '863 patent. Defendant distributes the '863 Accused Instrumentalities, at least in part, via an app for Apple and Android devices.

28.   FatSecret uses, and instructs end users to use, an apparatus for providing nutrition content information related to consumables. In particular, FatSecret uses (including via testing) its "Calorie Counter" application program ("app"), which provides nutrition content information related to consumables. FatSecret also provides and instructs users of the Calorie Counter app to install and operate the Calorie Counter app on hand-held devices. (*See, e.g.*,

http://www.fatsecret.com; http://blog.fatsecret.com/; https://www.fatsecret.com/connected; https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8..) The intended use of the '863 Accused Instrumentalities on an Apple or Android device results in the apparatus of claim 13.

29.   FatSecret and/or Calorie Counter app users use, in connection with the Calorie Counter app, a housing. The Calorie Counter app operates on a hand-held device, which includes a housing. (*See*, *e.g.*, https://www.fatsecret.com/connected.)

30.   FatSecret and/or Calorie Counter app users use a computer-readable memory located within the housing and storing a combination of code segments. The Calorie Counter app operates, for example, on iOS and Android hand-held devices and uses computer-readable memory located within the housing of such devices. The Calorie Counter app includes a combination of computer code segments. (*See*, *e.g.*, https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.)

31.   FatSecret and/or Calorie Counter app users use a computer-readable memory located within the housing and storing a combination of code segments. The Calorie Counter app operates, for example, on iOS and Android hand-held devices and uses computer-readable memory located within the housing of such devices. The Calorie Counter app includes a combination of computer code segments. (*See*, *e.g.*, https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.)

32.   FatSecret and/or Calorie Counter app users use a processor located within the

housing and operable to execute the combination of code segments. The Calorie Counter app

operates, for example, on iOS and Android hand-held devices, which include a processor. The

processor is operable to execute the computer code of the Calorie Counter app. (*See*, *e.g.*,

https://play.google.com/store/apps/details?id=com.fatsecret.android;

https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.)

33.   FatSecret and/or Calorie Counter app users use an output device incorporated into

the housing and operable to display an interactive display screen generated by the combination of

code segments, the interactive display screen presenting one or more lists of consumables and

related nutrition content information. The Calorie Counter app operates, for example, on iOS

and Android hand-held devices, which include an output device to display information from the

Calorie Counter app. The output device displays an interactive screen generated by the Calorie

Counter app, including a presentation of one or more lists of consumables and nutrition content

associated with such consumables. (*See*, *e.g.*, http://blog.fatsecret.com.)

34.   FatSecret and/or Calorie Counter app users use an input device coupled with the

processor and operable to allow a user to select a particular consumable from the interactive

display screen, whereupon the processor edits a date-associated data record stored in the

computer-readable memory to reflect an action involving the consumable. The Calorie Counter

app uses an input device, such as a touchscreen that is coupled with the processor, and that

allows a user to select a consumable via touch. Selection of a given consumable causes the

processor to edit a record for the user for a particular date to reflect that the user has consumed

the selected consumable on that date (and at a given time, such as breakfast, lunch, dinner, etc.).

(*See*, *e.g.*, http://blog.fatsecret.com.)

35. On information and belief, these '863 Accused Instrumentalities are marketed, provided to, and/or used by or for Defendant's partners, clients, customers and end users across the country and in this District.

36. Defendant was made aware of the '863 patent and its infringement thereof at least as early as the filing of this complaint.

37. Upon information and belief, since at least the time Defendant received notice, Defendant has induced and continues to induce others to infringe at least one claim of the '863 patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful blindness, actively aiding and abetting others to infringe, including but not limited to Defendant's partners, clients, customers, and end users, whose use of the '863 Accused Instrumentalities constitutes direct infringement of at least one claim of the '863 patent.

38. In particular, Defendant's actions that aid and abet others such as its partners, customers, clients, and end users to infringe include advertising and distributing the '863 Accused Instrumentalities and providing instruction materials, training, and services regarding the '863 Accused Instrumentalities. Defendant actively encourages its customers to track their food intake using Defendant's FatSecret Calorie Counter app. (*See, e.g.*, https://www.fatsecret.com/connected.) On information and belief, Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Defendant has had actual knowledge of the '863 patent and knowledge that its acts were inducing infringement of the '863 patent since at least the date Defendant received notice that such activities infringed the '863 patent.

39. Upon information and belief, Defendant is liable as a contributory infringer of the '863 patent under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United

States computerized interactive nutrition programs to be especially made or adapted for use in an infringement of the '863 patent. The '863 Accused Instrumentalities are a material component for use in practicing the '863 patent and are specifically made and are not a staple article of commerce suitable for substantial non-infringing use.

40.   Plaintiff has been harmed by Defendant's infringing activities.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 7,413,438

41.   The allegations set forth in the foregoing paragraphs 1 through 40 are incorporated into this Second Claim for Relief.

42.   On August 19, 2008, U.S. Patent No. 7,413,438 ("the '438 patent"), entitled "Computer Program, Method, and System for Monitoring Nutrition Content of Consumables and for Facilitating Menu Planning," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '438 patent is attached as Exhibit 2.

43.   The inventions of the '438 patent resolve technical problems related to the use of interactive databases to dynamically present information to consumers regarding food consumption and related data. For example, the inventions allow parties to customize the database with nutritional content of food, thereby modifying how the information stored in the database is presented to a particular user, enabling the user to adapt the program to more personally reflect eating habits and preferences.

44.   The claims of the '438 patent do not merely recite the performance of some business practice known from the pre-Internet world along with the requirement to perform it on the Internet. Instead, the claims of the '438 patent recite one or more inventive concepts that are rooted in computerized network and database technology, and overcome problems specifically arising in the realm of those technologies.

45.   The claims of the '438 patent recite an invention that is not merely the routine or conventional use of nutrition database technology. Instead, the invention makes use of an interactive database that can be customized to reflect the needs of each particular user. The '438 patent claims thus specify how network and database technology is manipulated to yield a desired result.

46.   The technology claimed in the '438 patent does not preempt all ways of using networks or databases, nor preempt the use of all such technologies, nor preempt any other well-known or prior art technology.

47.   Accordingly, each claim of the '438 patent recites a combination of elements sufficient to ensure that the claim in practice amounts to significantly more than a patent on an ineligible concept.

48.   Plaintiff is the assignee and owner of the right, title and interest in and to the '438 patent, including the right to assert all causes of action arising under said patents and the right to any remedies for infringement of them.

49.   Upon information and belief, and further based on internal use and testing on Apple and Android devices, Defendant has and continues to directly infringe, literally or under the doctrine of equivalents, at least claims 2, 3, 4, 5, 15, 16, and 17 of the '438 patent by making, using, selling, importing and/or providing and causing to be used products including, but not limited to, the FatSecret Calorie Counter application program, which practices an interactive nutrition database that dynamically presents information to consumers regarding food consumption and related data; allows parties to customize the database with nutritional content of foods, thereby modifying how the information stored in the database is presented to a

particular user; and enables the user to adapt the program to more personally reflect eating habits and preferences (the "'438 Accused Instrumentalities").

50.   In particular, claim 2 of the '438 patent recites a hand-held apparatus for providing nutrition content information. The apparatus embodies a housing that contains the following: a computer-readable memory; a network connection to access a communications network to retrieve nutrition information to store in the memory; an input device; a processor to sort the consumables based on the input; and an output device that displays the sorted consumables.

51.   On information and belief, the '438 Accused Instrumentalities infringe claim 2 of the '438 patent. Defendant distributes the '438 Accused Instrumentalities, at least in part, via an app for Apple and Android devices. (*See*, *e.g.*, https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.) The intended use of the '438 Accused Instrumentalities on an Apple or Android device results in the apparatus of claim 2. (*See, e.g.*, https://www.fatsecret.com/connected.)

52.   FatSecret uses, and instructs end users to use, an apparatus for providing nutrition content information. In particular, FatSecret uses (including via testing) its "FatSecret Calorie Counter" application program ("app"), which provides nutrition content information. FatSecret also provides and instructs users of its FatSecret Calorie Counter tool to install and operate the FatSecret Calorie Counter app on hand-held devices. (*See*, *e.g.*, http://www.fatsecret.com/connected.)

53.   FatSecret and/or FatSecret Calorie Counter app users use a housing. FatSecret

Calorie Counter app operates on a hand-held device, which includes a housing. (*See*, *e.g.*,

https://www.fatsecret.com/connected.)

54.   FatSecret and/or FatSecret Calorie Counter app users use a computer-readable

memory located within the housing. The FatSecret Calorie Counter app operates, for example,

on iOS and Android hand-held devices and uses computer-readable memory located within the

housing of such devices. (*See*, *e.g.*,

https://play.google.com/store/apps/details?id=com.fatsecret.android;

https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.)

55.   FatSecret and/or FatSecret Calorie Counter app users use a network connection

coupled with the memory and operable to access a communications network to retrieve

consumables and related nutrition content information to store in the memory. The FatSecret

Calorie Counter app uses a network connection, such as WiFi or a cellular network connection

coupled to the hand-held device memory, to access a communications network and retrieve

consumables and related nutrition content information to store in the memory. (*See*, *e.g.*,

https://www.fatsecret.com/connected.)

56.   FatSecret and/or FatSecret Calorie Counter app users further use an input device

coupled with the processor and operable to allow a user to provide an input. The FatSecret

Calorie Counter app uses an input device, such as a touchscreen that is coupled with the housing,

and that allows a user to provide an input, such as typing one or more keywords. (*See*, *e.g.*,

https://www.fatsecret.com/connected.)

57.   FatSecret and/or FatSecret Calorie Counter app users use a processor located

within the housing that is operable to access the memory to sort the consumables based on the

input. The FatSecret Calorie Counter app uses the processor to sort the consumables continually based on the input by the user. For example, a user can input "apple c" and ultimately choose "Apple Chips" from the continually sorted list of consumables that appears in the Calorie Counter app as the user types.

58.   FatSecret and/or FatSecret Calorie Counter app users use an output device incorporated into the housing and operable to display the sorted consumables. The FatSecret Calorie Counter app operates, for example, on iOS and Android hand-held devices which include an output device to display information from the FatSecret Calorie Counter app, including the sorted consumables, as shown in the element above. (*See*, *e.g.*, https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.)

59.   Claim 3 of the '438 patent recites the apparatus of claim 2, wherein the output device is an interactive display screen.

60.   On information and belief, the '438 Accused Instrumentalities infringe claim 3 of the '438 patent. The intended use of the '438 Accused Instrumentalities on an Apple or Android device results in the apparatus of claim 3. (*See*, *e.g.*, https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8; https://www.fatsecret.com/connected.)

61.   FatSecret and/or FatSecret Calorie Counter app users use an output device, wherein the output device is an interactive display screen. The FatSecret Calorie Counter app operates, for example, on iOS and Android hand-held devices, which include an output device that is a touch interactive display screen. (*See*, *e.g.*, https://www.fatsecret.com/connected.)

62.   Claim 4 of the '438 patent recites the apparatus of claim 2, wherein the communications network is a wide-area network, a local-area network, the Internet, and combinations thereof.

63.   On information and belief, the '438 Accused Instrumentalities infringe claim 4 of the '438 patent. The intended use of the '438 Accused Instrumentalities on an Apple or Android device results in the apparatus of claim 4. (*See*, *e.g.*, https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8; https://www.fatsecret.com/connected.)

64.   FatSecret and/or FatSecret Calorie Counter app users use an output device that retrieves consumables and related nutrition information via a communications network, wherein the communications network is selected from the group consisting of: a wide-area network, a local-area network, the Internet, and combinations thereof. The FatSecret Calorie Counter app operates, for example, on iOS and Android hand-held devices, which retrieve consumables via the Internet. (*See, e.g.*, http://blog.fatsecret.com/; https://www.fatsecret.com/connected.)

65.   Claim 5 of the '438 patent recites the apparatus of claim 2, wherein the memory includes a database and the consumables and related nutrition content are stored in the database.

66.   On information and belief, the '438 Accused Instrumentalities infringe claim 5 of the '438 patent. (*See, e.g.*, https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8; https://www.fatsecret.com/connected.)

67.   FatSecret and/or FatSecret Calorie Counter app users use an apparatus wherein the memory includes a database and the consumables and related nutrition content information are stored in the database. (*See*, *e.g.*, https://www.fatsecret.com/.)

68.   Claim 15 of the '438 patent recites a hand-held apparatus for providing nutrition content information. The apparatus embodies a housing that contains the following: a computer-readable memory that stores a database including consumables and related nutrition content information; an input device; a processor that accesses the database to sort the consumables based on input; and an output device that displays the sorted consumables.

69.   On information and belief, the '438 Accused Instrumentalities infringe claim 15 of the '438 patent. Defendant distributes the '438 Accused Instrumentalities, at least in part, via an app for Apple and Android devices. (*See*, *e.g.*, https://play.google.com/store/apps/details?id=com.fatsecret.android; https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8; https://www.fatsecret.com/connected.) The intended use of the '438 Accused Instrumentalities on an Apple or Android device results in the apparatus of claim 15. (*See, e.g.*, https://www.fatsecret.com/connected.)

70.   FatSecret uses, and instructs end users to use a hand-held apparatus for providing nutrition content information. In particular, FatSecret uses (including via testing) the FatSecret Calorie Counter application program, which provides nutrition content information. FatSecret also provides and instructs users of the FatSecret Calorie Counter app to install and operate the FatSecret Calorie Counter app on hand-held devices. (*See*, *e.g.*, https://ww https://play.google.com/store/apps/details?id=com.fatsecret.android;

https://itunes.apple.com/us/app/calorie-counter-by-

fatsecret/id347184248?mt=8w.fatsecret.com/.)

71.   FatSecret and/or FatSecret Calorie Counter app users use a housing. FatSecret

Calorie Counter app operates on a hand-held device, which includes a housing. (*See*, *e.g.*,

https://www.fatsecret.com/connected.)

72. FatSecret and/or FatSecret Calorie Counter app users use a computer-readable

memory located within the housing. The FatSecret Calorie Counter app operates, for example,

on iOS and Android hand-held devices and uses computer-readable memory located within the

housing of such devices. (*See, e.g.*,

https://play.google.com/store/apps/details?id=com.fatsecret.android;

https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8;

https://www.fatsecret.com/connected.)

73.   FatSecret and/or FatSecret Calorie Counter app users use an input device coupled

with the processor and operable to allow a user to provide an input. FatSecret uses an input

device, such as a touchscreen that is coupled with the housing, and that allows a user to provide

an input, such as typing one or more keywords. For example, a user may input the keywords

"Apple Chips" and be provided with a result based on the input.

74.   FatSecret and/or FatSecret Calorie Counter app users use a processor located

within the housing that is operable to access the memory to sort the consumables based on the

input. The FatSecret Calorie Counter app uses the processor to sort the consumables continually

based on the input by the user. For example, a user may input "app" or "apple c" and ultimately

choose "Apple Chips" from the continually sorted list of consumables.

75.   FatSecret and/or FatSecret Calorie Counter app users use an output device

incorporated into the housing and operable to display the sorted consumables. The FatSecret

Calorie Counter app operates, for example, on iOS and Android hand-held devices which include

an output device to display information from the FatSecret Calorie Counter app, including the

sorted consumables, as shown in the element above. (*See*, *e.g.*,

https://play.google.com/store/apps/details?id=com.fatsecret.android;

https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.)

76.   Claim 16 of the '438 patent recites the apparatus of claim 15, wherein the input is

associated with a calendar date and the consumables are sorted and displayed based on the

calendar date.

77.   The '438 Accused Instrumentalities infringe claim 16 of the '438 patent. (*See,

e.g.*, https://play.google.com/store/apps/details?id=com.fatsecret.android;

https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.)

78.   FatSecret and/or FatSecret Calorie Counter app users use an apparatus wherein

the input is associated with a calendar date and the consumables are sorted and displayed based

on the calendar date. Input of a given consumable is associated with a particular calendar date

(i.e., the date on which the consumable was consumed). The one or more consumables are then

sorted by calendar date and displayed when the calendar date with which the consumables are

associated is selected. (*See*, *e.g.*, http://blog.fatsecret.com/page/2.)

79.   Claim 17 of the '438 patent recites the apparatus of claim 15, wherein the output

device is an interactive display system.

80.   The '438 Accused Instrumentalities infringe claim 17 of the '438 patent. The

intended use of the '438 Accused Instrumentalities on an Apple or Android device results in the

apparatus of claim 17. (*See, e.g.*,

https://play.google.com/store/apps/details?id=com.fatsecret.android;

https://itunes.apple.com/us/app/calorie-counter-by-fatsecret/id347184248?mt=8.)

81.   FatSecret and/or FatSecret Calorie Counter app users use an apparatus wherein

the output device is an interactive display screen. The output device is a display that a user may

select consumables to add, edit, delete, etc. (*See*, *e.g.*, https://www.fatsecret.com/;

https://www.fatsecret.com/connected.)

82.   On information and belief, these '438 Accused Instrumentalities are used

marketed, provided to, and/or used by or for Defendant's partners, clients, customers and end

users across the country and in this District.

83.   Defendant was made aware of the '438 patent and its infringement thereof at least

as early as the filing of this complaint.

84.   Upon information and belief, since at least the time Defendant received notice,

Defendant has induced and continues to induce others to infringe at least one claim of the '438

patent under 35 U.S.C. § 271(b) by, among other things, and with specific intent or willful

blindness, actively aiding and abetting others to infringe, including but not limited to

Defendant's partners, clients, customers, and end users, whose use of the '438 Accused

Instrumentalities constitutes direct infringement of at least one claim of the '438 patent.

85. In particular, Defendant's actions that aid and abet others such as its partners,

customers, clients, and end users to infringe include advertising and distributing the '438

Accused Instrumentalities and providing instruction materials, training, and services regarding

the '438 Accused Instrumentalities. Defendant actively encourages its customers to track their

food intake using Defendant's FatSecret Calorie Counter app. (*See, e.g.*,

https://www.fatsecret.com/.) On information and belief, Defendant has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Defendant has had actual knowledge of the '438 patent and knowledge that its acts were inducing infringement of the '438 patent since at least the date Defendant received notice that such activities infringed the '438 patent.

86. Upon information and belief, Defendant is liable as a contributory infringer of the '438 patent under 35 U.S.C. § 271(c) by offering to sell, selling and importing into the United States computerized interactive nutrition programs to be especially made or adapted for use in an infringement of the '438 patent. The '438 Accused Instrumentalities are a material component for use in practicing the '438 patent and are specifically made and are not a staple article of commerce suitable for substantial non-infringing use.

87. Plaintiff has been harmed by Defendant's infringing activities.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands a trial by jury on all issues triable as such.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment for itself and against Defendant as follows:

A. An adjudication that Defendant has infringed the '863 and '438 patents;

B. An award of damages to be paid by Defendant adequate to compensate Plaintiff for Defendant's past infringement of the '863 and '438 patents, and any continuing or future infringement through the date such judgment is entered, including interest, costs, expenses and an accounting of all infringing acts including, but not limited to, those acts not presented at trial;

C. A declaration that this case is exceptional under 35 U.S.C. § 285, and an award of Plaintiff's reasonable attorneys' fees; and

D.   An award to Plaintiff of such further relief at law or in equity as the Court deems

just and proper.

Dated: June 22, 2017   DEVLIN LAW FIRM LLC

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