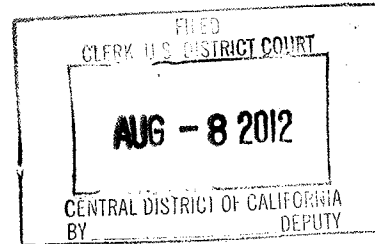


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KICKAPOO RUN, LLC



UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

KICKAPOO RUN, LLC,

Plaintiff,

v.

ELECTRONIC MEDICAL SOLUTIONS,  
Defendant.

Case No. **12-1278** (MLbx)

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**Jury Trial Demanded**

BY FAX

**PLAINTIFF'S ORIGINAL COMPLAINT**

Plaintiff Kickapoo Run, LLC (hereinafter, "Kickapoo" or "Plaintiff") by and through its undersigned counsel, files this Original Complaint against Defendant Electronic Medical Solutions ("EMS" or "Defendant"), as follows:

**NATURE OF THE ACTION**

1. This is a patent infringement action to stop Defendant's infringement of Plaintiff's United States Patent No. 5,961,332 (the "'332 patent"), entitled "Apparatus for Processing Psychological Data and Method of Use Thereof." A copy of the '332 patent is attached hereto as Exhibit A. Kickapoo is the assignee of the '332 patent. Plaintiff seeks injunctive relief and monetary damages.

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## **PARTIES**

2. Plaintiff Kickapoo is a limited liability company organized and existing under the laws of Florida with its principal place of business at 3015 N. Ocean Boulevard, #6H, Ft. Lauderdale, Florida 33308. Kickapoo is the assignee of all title and interest of the '332 patent. Plaintiff possesses the entire right to sue for infringement and recover past damages.

3. Upon information and belief, Defendant Electronic Medical Solutions ("EMS") is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 9877 Chapman Avenue #D – PMB#453, Garden Grove, California 92841.

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## **JURISDICTION AND VENUE**

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant because Defendant has minimum contacts within the State of California, and the Central District of California; Defendant has purposefully availed itself of the privileges of conducting business in the State of California and in the Central District of California; Defendant has sought protection and benefit from the laws of the State of California; Defendant regularly conducts business within the State of California and within the Central District of California; and, Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of California and in the Central District of California.

6. More specifically, Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises its products and services in the United States, the State of California, and the Central District of California.

1 Upon information and belief, Defendant has committed patent infringement in the  
2 State of California and in the Central District of California, has contributed to  
3 patent infringement in the State of California and in the Central District of  
4 California and/or has induced others to commit patent infringement in the State of  
5 California and in the Central District of California. Defendant solicits customers in  
6 the State of California and in the Central District of California. Each Defendant has  
7 many paying customers who are residents of the State of California and the Central  
8 District of California and who each use respective Defendant's products and  
9 services in the State of California and in the Central District of California.

10 7. Venue is proper in the Central District of California pursuant to 28  
11 U.S.C. §§ 1391 and 1400(b).

### 12 **COUNT I – PATENT INFRINGEMENT**

13 8. United States Patent No. 5,961,332, entitled "Apparatus for Processing  
14 Psychological Data and Method of Use Thereof," was duly and legally issued by the  
15 United States Patent and Trademark Office on October 5, 1999 after full and fair  
16 examination. Plaintiff is the assignee of all rights, title, and interest in and to the  
17 '332 patent and possesses all rights of recovery under the '332 patent including the  
18 right to sue for infringement and recover past damages.

19 9. Upon information and belief, EMS has infringed and continues to  
20 infringe one or more claims of the '332 patent by making, using, providing,  
21 offering to sell, and selling (directly or through intermediaries), in this district and  
22 elsewhere in the United States, systems for remotely utilizing the My Electronic  
23 MD server for processing psychological data.

24 10. Upon information and belief EMS has induced and continues to induce  
25 infringement of one or more claims of the '332 patent in this district and elsewhere  
26 in the United States, by, among other things, actively and successfully encouraging,  
27 instructing, enabling and otherwise causing end users and/or customers to use its  
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1 My Electronic MD server via the My Electronic MD website in a manner which  
2 infringers the '332 patent. EMS has had knowledge of the '332 patent since  
3 commencement of this action at least and, upon information and belief, continues to  
4 encourage, instruct, enable and otherwise cause end users and/or customers to use  
5 its products in a manner which infringers the '332 patent. Upon information and  
6 belief, EMS has specifically intended that its end users and/or customers use the  
7 accused products in such a way that infringes the '332 patent by, at minimum,  
8 proving instructions to end users and/or customers on how to use the accused  
9 products in such a way that infringes the '332 patent and knew, or have known, that  
10 its actions, including but not limited to providing such instructions, would induce,  
11 have induced, and will continue to induce infringement by end users and/or  
12 customers.

13 11. Upon information and belief, EMS has contributed to and continues to  
14 contribute to the infringement of one or more claims of the '332 patent by offering  
15 to sell, and selling directly or through intermediaries, to end users and/or customers,  
16 in this district and elsewhere in the United States, its products or services covered  
17 by the '332 patent that constitutes a material part of the invention, and that end  
18 users and/or customers have utilized said products in a manner that infringes one or  
19 more claims of the '332 patent. Upon information and belief, EMS has been aware,  
20 since at least the service of this action, that use of its My Electronic MD server via  
21 the My Electronic MD website in a manner which infringers the '332 patent, are  
22 especially made and/or adapted for user(s) that infringe one or more claims of the  
23 '332 patent and, are, therefore not staple articles or commodities of commerce  
24 suitable for substantial non-infringing use.

25 12. Defendant's aforesaid activities have been without authority and/or  
26 license from Plaintiff.  
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1           13. Plaintiff is entitled to recover from Defendant the damages sustained  
2 by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at  
3 trial, which, by law, cannot be less than a reasonable royalty, together with interest  
4 and costs as fixed by this Court under 3 U.S.C. § 284.

5           14. Defendant's infringement of Plaintiff's exclusive rights under the '332  
6 patent will continue to damage Plaintiff, causing irreparable harm for which there is  
7 no adequate remedy at law, unless enjoined by this Court.

8                           **JURY DEMAND**

9           15. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the  
10 Federal Rules of Civil Procedure.

11                           **PRAYER FOR RELIEF**

12           16. Plaintiff respectfully requests that the Court find in its favor and  
13 against Defendant, and that the Court grant Plaintiff the following relief:

- 14                   A. An adjudication that one or more claims of the '332  
15 patent has been infringed, either literally and/or under the  
16 doctrine of equivalents, by Defendant and/or by others to  
17 whose infringement Defendant has contributed and/or by  
18 others whose infringement has been induced by  
19 Defendant;
- 20                   B. An award to Plaintiff of damages adequate to compensate  
21 Plaintiff for the Defendant's acts of infringement together  
22 with pre-judgment and post-judgment interest;
- 23                   C. A grant of permanent injunction pursuant to 35 U.S.C. §  
24 283, enjoining the Defendant from further acts of (1)  
25 infringement, (2) contributory infringement, and (3)  
26 actively inducing infringement with respect to the claims  
27 of the '332 patent;
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- D. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- E. Any further relief that this Court deem just and proper.

1 Dated: August 8, 2012.

2 Respectfully submitted,

3 **HENINGER GARRISON DAVIS, LLC**

4 

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12 **Attorney for Plaintiff Kickapoo Run, LLC**