

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UBICOMM, LLC,

Plaintiff,

v.

ACE HARDWARE CORPORATION,

Defendant.

Civil Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff UbiComm, LLC (“UbiComm” or “Plaintiff”), for its complaint against Defendant Ace Hardware Corporation (“Ace Hardware” or “Defendant”), hereby alleges as follows:

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 UbiComm, LLC is a Delaware limited liability company organized with its place of business at 1220 N. Market Street, Suite 806, Wilmington, Delaware 19801.

3. Upon information and belief, Defendant Ace Hardware is a Delaware corporation with its principal place of business at 2200 Kensington Ct., Oak Brook, IL 60523.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(c) and 1400(b).

6. Upon information and belief, Ace Hardware is subject to the jurisdiction of this Court by virtue of the fact it is incorporated in Delaware. Upon information and belief, Ace Hardware is also subject to the jurisdiction of this Court by reason of its acts of patent infringement which have been committed in this Judicial District, and by virtue of its regularly conducted and systematic business contacts in this State. As such, Ace Hardware has purposefully availed itself of the privilege of conducting business within this Judicial District; has established sufficient minimum contacts with this Judicial District such that it should reasonably and fairly anticipate being haled into court in this Judicial District; has purposefully directed activities at residents of this State; and at least a portion of the patent infringement claims alleged herein arise out of or are related to one or more of the foregoing activities.

THE PATENT-IN-SUIT

7. On February 11, 1997, United States Patent No. 5,603,054 (the “‘054 Patent”), entitled “Method For Triggering Selected Machine Event When The Triggering Conditions Of An Identified User Are Perceived,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ‘054 Patent is attached as Exhibit A to this Complaint.

8. UbiComm is the assignee and owner of the right, title and interest in and to the ‘054 Patent, including the right to assert all causes of action arising under the ‘054 Patent and the right to any remedies for infringement.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,603,054

9. The allegations set forth in the foregoing paragraphs 1 through 8 are hereby realleged and incorporated herein by reference.

10. Without license or authorization, Ace Hardware has directly infringed and continues to directly infringe one or more claims of the ‘054 Patent in this Judicial District and

elsewhere in the United States at least by making and/or using one or more websites, including but not limited to, www.acehardware.com, operated using a method that embodies the inventions claimed in the '054 Patent. The '054 Patent covers a method of triggering a selected machine event in a system including a multiplicity of computer controlled machines and a multiplicity of users. One such machine event includes sending reminder emails to online shoppers who place items in their online shopping carts and then delay purchasing items in their online shopping carts. Ace Hardware sends such reminder emails to online shoppers on its website(s) who delay purchasing items in their shopping carts or who abandon their shopping carts. Such acts constitute infringement under at least 35 U.S.C. § 271(a).

11. Because of Ace Hardware's infringement of the '054 Patent, UbiComm has suffered damages and will continue to suffer damages in the future.

JURY DEMAND

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

PRAYER FOR RELIEF

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

- A. An adjudication that Defendant has infringed the '054 Patent;
- B. An award of damages to be paid by Defendant adequate to compensate UbiComm for its past infringement of the '054 Patent, 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 UbiComm of such further relief at law or in equity as the Court deems just and proper.

Respectfully submitted,

Dated: May 17, 2013

STAMOULIS & WEINBLATT LLC

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