

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UBICOMM, LLC,

Plaintiff,

v.

INDIGO IDENTITYWARE, INC.,

Defendant.

Civil Case No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff UbiComm, LLC (“UbiComm” or “Plaintiff”), for its complaint against Defendant Indigo Identityware, Inc. (“Indigo” 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 Indigo is a Delaware corporation with its principal place of business at 3925 West 50th Street, Suite 200, Edina, MN 55424.

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. Indigo is subject to the jurisdiction of this Court by virtue of the fact it is incorporated in Delaware. Upon information and belief, Indigo 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, Indigo 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 PATENTS-IN-SUIT

7. On September 10, 1996, United States Patent No. 5,555,376 (the “’376 Patent”), entitled “Method For Granting A User Request Having Locational And Contextual Attributes Consistent With User Policies For Devices Having Locational Attributes Consistent With The User Request,” was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the ’376 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 ’376 Patent, including the right to assert all causes of action arising under the ’376 Patent and the right to any remedies for infringement.

9. 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 B to this Complaint.

10. 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.

11. On March 11, 1997, United States Patent No. 5,611,050 (the "'050 Patent"), entitled "Method For Selectively Performing Event On Computer Controlled Device Whose Location And Allowable Operation Is Consistent With The Contextual And Locational Attributes Of The Event," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '050 Patent is attached as Exhibit C to this Complaint.

12. UbiComm is the assignee and owner of the right, title and interest in and to the '050 Patent, including the right to assert all causes of action arising under the '050 Patent and the right to any remedies for infringement.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 5,555,376

13. The allegations set forth in the foregoing paragraphs 1 through 12 are hereby realleged and incorporated herein by reference.

14. In violation of 35 U.S.C. § 271(a) and without license or authorization, Indigo has directly infringed, and continues to directly infringe, at least Claim 1 of the '376 Patent both literally and under the doctrine of equivalents. Indigo's direct infringement includes the use, testing and operation (the "'376 Patent Direct Accused Activities"), in the United States, including within this Judicial District, of its context- and location-aware management technology, including Indigo Identityware solution when connected to, installed with or operated with a computer and/or printer network (the "'376 Patent Accused Products").

15. The '376 Patent Direct Accused Activities include using, testing and operating of its context- and location-aware management technology, including Indigo Identityware solution, on Indigo's own or on a customer's own computer network system and/or printers. The infringing methods include the method of operating its context- and location-aware management technology on a computer system that includes printers. The '376 Patent Accused Products include software that is capable of performing and/or implementing its context- and location-aware management technology, including Indigo Identityware solution and any affiliated devices.

16. UbiComm provided actual notice to Indigo of its infringement of the '376 Patent in a letter sent by Federal Express on June 10, 2013. In that letter, UbiComm informed Indigo that it was infringing the '376 Patent by making, using, selling, offering to sell, and/or importing the Indigo Identityware solution. UbiComm's letter also informed Indigo that Indigo was inducing infringement of the '376 Patent by the sale, marketing and advertising of the '376 Patent Accused Products, as well as by allowing, encouraging, and training its partners, customers and end users to use the infringing products and services. UbiComm's letter also informed Indigo that Indigo was contributing to infringement of the '376 Patent by selling and offering for sale the '376 Patent Accused Products. With respect to both induced and contributory infringement, UbiComm's letter informed Indigo that the direct infringers were Indigo's partners and customers.

17. Indigo has had actual knowledge of the '376 Patent and Indigo's infringement of that patent since at least the date that Indigo received the June 10, 2013 letter.

18. Upon information and belief, Indigo has committed and continues to commit acts of contributory infringement of at least claim 1 of the '376 Patent under 35 U.S.C. § 271(c) by

offering to sell and selling products, including the '376 Patent Accused Products, to others including its partners and customers, knowing or willfully blind to the fact that these products constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '376 Patent, and have no substantial non-infringing uses.

19. In particular, the using, testing, and operating of the '376 Patent Accused Products constitute a material part of the claimed invention at least because they implement the its context- and location-aware management technology which is used by Indigo's partners and customers to perform all of the steps recited in claim 1 of the '376 Patent. The '376 Patent Accused Products were made or especially adapted for use in an infringement of the '376 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to practice the claimed method of its context- and location-aware management as recited in claim 1 of the '376 Patent. The use, testing, and operating of its context- and location-aware management features in such products by Indigo's customers constitutes direct infringement of at least claim 1 of the '376 Patent. Indigo has known or remained willfully blind to these facts since at least the date it received a notice letter from UbiComm notifying Indigo that the use of its context- and location-aware management feature in the '376 Patent Accused Products infringed the '376 Patent.

20. Upon information and belief, Indigo has induced and continues to induce others to infringe at least claim 1 of the '376 Patent under 35 U.S.C. § 271(b) by making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '376 Patent Accused Products (the "'376 Patent Indirect Accused Activities").

21. The '376 Patent Indirect Accused Activities include, among other things, making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and

offering for sale the '376 Patent Accused Products, as well as actively aiding and abetting others to infringe, including, but not limited to, Indigo's partners and customers whose use, testing, and operating of the '376 Patent Accused Products and performance of the '376 Patent Direct Accused Activities constitutes direct infringement of at least claim 1 of the '376 Patent. In particular, Indigo's actions that aid and abet others such as their partners and customers to infringe include advertising, marketing, and distributing the '376 Patent Accused Products and providing instruction materials and training regarding the '376 Patent Accused Products and '376 Patent Accused Activities. On information and belief, Indigo has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Indigo has had actual knowledge of the '376 Patent and that its acts were inducing its partners and customers to infringe the '376 Patent since at least the date it received the notice letter from UbiComm notifying Indigo that the context- and location-aware management feature in the '376 Patent Accused Products infringed the '376 Patent.

22. UbiComm notified Indigo of its infringement of the '376 Patent including an identification of the particular infringing products and features, but Indigo thereafter continued to infringe the '376 Patent by continuing the activities described in Paragraphs 14-21 above. On information and belief, Indigo's infringement has been and continues to be willful.

23. Because of Indigo's infringement of the '376 Patent, UbiComm has suffered damages and will continue to suffer damages in the future.

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

24. The allegations set forth in the foregoing paragraphs 1 through 23 are hereby realleged and incorporated herein by reference.

25. In violation of 35 U.S.C. § 271(a) and without license or authorization, Indigo has directly infringed, and continues to directly infringe, at least Claim 1 of the '054 Patent both

literally and under the doctrine of equivalents. Indigo's direct infringement includes the use, testing and operation (the "'054 Patent Direct Accused Activities"), in the United States, including within this Judicial District, of its context- and location-aware management technology, including Indigo Identityware solution when connected to, installed with or operated with a computer and/or printer network (the "'054 Patent Accused Products").

26. The '054 Patent Direct Accused Activities include using, testing and operating of its context- and location-aware management technology, including Indigo Identityware solution, on Indigo's own or on a customer's own computer network system and/or printers. The infringing methods include the method of operating its context- and location-aware management technology on a computer system that includes printers. The '054 Patent Accused Products include software that is capable of performing and/or implementing its context- and location-aware management technology, including Indigo Identityware solution and any affiliated devices.

27. UbiComm provided actual notice to Indigo of its infringement of the '054 Patent in a letter sent by Federal Express on June 10, 2013. In that letter, UbiComm informed Indigo that it was infringing the '054 Patent by making, using, selling, offering to sell, and/or importing the Indigo Identityware solution. UbiComm's letter also informed Indigo that Indigo was inducing infringement of the '054 Patent by the sale, marketing and advertising of the '054 Patent Accused Products, as well as by allowing, encouraging, and training its partners, customers and end users to use the infringing products and services. UbiComm's letter also informed Indigo that Indigo was contributing to infringement of the '054 Patent by selling and offering for sale the '054 Patent Accused Products. With respect to both induced and

contributory infringement, UbiComm's letter informed Indigo that the direct infringers were Indigo's partners and customers.

28. Indigo has had actual knowledge of the '054 Patent and Indigo's infringement of that patent since at least the date that Indigo received the June 10, 2013 letter.

29. Upon information and belief, Indigo has committed and continues to commit acts of contributory infringement of at least claim 1 of the '054 Patent under 35 U.S.C. § 271(c) by offering to sell and selling products, including the '054 Patent Accused Products, to others including its partners and customers, knowing or willfully blind to the fact that these products constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '054 Patent, and have no substantial non-infringing uses.

30. In particular, the using, testing, and operating of the '054 Patent Accused Products constitute a material part of the claimed invention at least because they implement the its context- and location-aware management technology which is used by Indigo's partners and customers to perform all of the steps recited in claim 1 of the '054 Patent. The '054 Patent Accused Products were made or especially adapted for use in an infringement of the '054 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to practice the claimed method of its context- and location-aware management as recited in claim 1 of the '054 Patent. The use, testing, and operating of its context- and location-aware management features in such products by Indigo's customers constitutes direct infringement of at least claim 1 of the '054 Patent. Indigo has known or remained willfully blind to these facts since at least the date it received a notice letter from UbiComm notifying Indigo that the use of its context- and location-aware management feature in the '054 Patent Accused Products infringed the '054 Patent.

31. Upon information and belief, Indigo has induced and continues to induce others to infringe at least claim 1 of the '054 Patent under 35 U.S.C. § 271(b) by making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '054 Patent Accused Products (the "'054 Patent Indirect Accused Activities").

32. The '054 Patent Indirect Accused Activities include, among other things, making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '054 Patent Accused Products, as well as actively aiding and abetting others to infringe, including, but not limited to, Indigo's partners and customers whose use, testing, and operating of the '054 Patent Accused Products and performance of the '054 Patent Direct Accused Activities constitutes direct infringement of at least claim 1 of the '054 Patent. In particular, Indigo's actions that aid and abet others such as their partners and customers to infringe include advertising, marketing, and distributing the '054 Patent Accused Products and providing instruction materials and training regarding the '054 Patent Accused Products and '054 Patent Accused Activities. On information and belief, Indigo has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Indigo has had actual knowledge of the '054 Patent and that its acts were inducing its partners and customers to infringe the '054 Patent since at least the date it received the notice letter from UbiComm notifying Indigo that the context- and location-aware management feature in the '054 Patent Accused Products infringed the '054 Patent.

33. UbiComm notified Indigo of its infringement of the '054 Patent including an identification of the particular infringing products and features, but Indigo thereafter continued to infringe the '054 Patent by continuing the activities described in Paragraphs 24-32 above. On information and belief, Indigo's infringement has been and continues to be willful.

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

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 5,611,050

35. The allegations set forth in the foregoing paragraphs 1 through 34 are hereby realleged and incorporated herein by reference.

36. In violation of 35 U.S.C. § 271(a) and without license or authorization, Indigo has directly infringed, and continues to directly infringe, at least Claim 1 of the '050 Patent both literally and under the doctrine of equivalents. Indigo's direct infringement includes the use, testing and operation (the "'050 Patent Direct Accused Activities"), in the United States, including within this Judicial District, of its context- and location-aware management technology, including Indigo Identityware solution when connected to, installed with or operated with a computer and/or printer network (the "'050 Patent Accused Products").

37. The '050 Patent Direct Accused Activities include using, testing and operating of its context- and location-aware management technology, including Indigo Identityware solution, on Indigo's own or on a customer's own computer network system and/or printers. The infringing methods include the method of operating its context- and location-aware management technology on a computer system that includes printers. The '050 Patent Accused Products include software that is capable of performing and/or implementing its context- and location-aware management technology, including Indigo Identityware solution and any affiliated devices.

38. UbiComm provided actual notice to Indigo of its infringement of the '050 Patent in a letter sent by Federal Express on June 10, 2013. In that letter, UbiComm informed Indigo that it was infringing the '050 Patent by making, using, selling, offering to sell, and/or importing

the Indigo Identityware solution. UbiComm's letter also informed Indigo that Indigo was inducing infringement of the '050 Patent by the sale, marketing and advertising of the '050 Patent Accused Products, as well as by allowing, encouraging, and training its partners, customers and end users to use the infringing products and services. UbiComm's letter also informed Indigo that Indigo was contributing to infringement of the '050 Patent by selling and offering for sale the '050 Patent Accused Products. With respect to both induced and contributory infringement, UbiComm's letter informed Indigo that the direct infringers were Indigo's partners and customers.

39. Indigo has had actual knowledge of the '050 Patent and Indigo's infringement of that patent since at least the date that Indigo received the June 10, 2013 letter.

40. Upon information and belief, Indigo has committed and continues to commit acts of contributory infringement of at least claim 1 of the '050 Patent under 35 U.S.C. § 271(c) by offering to sell and selling products, including the '050 Patent Accused Products, to others including its partners and customers, knowing or willfully blind to the fact that these products constitute a material part of the invention, were especially made or especially adapted for use in an infringement of the '050 Patent, and have no substantial non-infringing uses.

41. In particular, the using, testing, and operating of the '050 Patent Accused Products constitute a material part of the claimed invention at least because they implement the its context- and location-aware management technology which is used by Indigo's partners and customers to perform all of the steps recited in claim 1 of the '050 Patent. The '050 Patent Accused Products were made or especially adapted for use in an infringement of the '050 Patent and have no substantial non-infringing uses at least because they contain components whose only purpose is to practice the claimed method of its context- and location-aware management as

recited in claim 1 of the '050 Patent. The use, testing, and operating of its context- and location-aware management features in such products by Indigo's customers constitutes direct infringement of at least claim 1 of the '050 Patent. Indigo has known or remained willfully blind to these facts since at least the date it received a notice letter from UbiComm notifying Indigo that the use of its context- and location-aware management feature in the '050 Patent Accused Products infringed the '050 Patent.

42. Upon information and belief, Indigo has induced and continues to induce others to infringe at least claim 1 of the '050 Patent under 35 U.S.C. § 271(b) by making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '050 Patent Accused Products (the "'050 Patent Indirect Accused Activities").

43. The '054 Patent Indirect Accused Activities include, among other things, making, selling, importing, installing, servicing, promoting, advertising, marketing, distributing, and offering for sale the '050 Patent Accused Products, as well as actively aiding and abetting others to infringe, including, but not limited to, Indigo's partners and customers whose use, testing, and operating of the '050 Patent Accused Products and performance of the '050 Patent Direct Accused Activities constitutes direct infringement of at least claim 1 of the '050 Patent. In particular, Indigo's actions that aid and abet others such as their partners and customers to infringe include advertising, marketing, and distributing the '050 Patent Accused Products and providing instruction materials and training regarding the '050 Patent Accused Products and '050 Patent Accused Activities. On information and belief, Indigo has engaged in such actions with specific intent to cause infringement or with willful blindness to the resulting infringement because Indigo has had actual knowledge of the '050 Patent and that its acts were inducing its partners and customers to infringe the '050 Patent since at least the date it received the notice

letter from UbiComm notifying Indigo that the context- and location-aware management feature in the '050 Patent Accused Products infringed the '050 Patent.

44. UbiComm notified Indigo of its infringement of the '050 Patent including an identification of the particular infringing products and features, but Indigo thereafter continued to infringe the '050 Patent by continuing the activities described in Paragraphs 35-43 above. On information and belief, Indigo's infringement has been and continues to be willful.

45. Because of Indigo's infringement of the '050 Patent, UbiComm has suffered damages and will continue to suffer damages in the future.

JURY DEMAND

46. 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 Indigo has infringed the claims of the '376, '054, and '050 Patents;

B. An award of damages to be paid by Indigo adequate to compensate UbiComm for its past infringement of the '376, '054, and '050 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. An injunction ordering Indigo to pay an ongoing royalty in an amount to be determined for any continued infringement after the date judgment is entered;

D. An award of treble damages under 35 U.S.C. § 284;

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

F. An award to UbiComm of such further relief at law or in equity as the Court deems just and proper.

Respectfully submitted,

Dated: June 28, 2013

STAMOULIS & WEINBLATT LLC

/s/ Stamatios Stamoulis

Stamatios Stamoulis #4606

stamoulis@swdelaw.com

Richard C. Weinblatt #5080

weinblatt@swdelaw.com

Two Fox Point Centre

6 Denny Road, Suite 307

Wilmington, DE 19809

Telephone: (302) 999-1540

Attorneys for Plaintiff

UbiComm, LLC