

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

ANNUITEK, LLC,

Plaintiff,

v.

**AVIVA LIFE AND ANNUITY
COMPANY,**

Defendant.

Case No. 6:13-cv-822

PATENT CASE

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Annuitek, LLC files this Complaint against Aviva Life and Annuity Company, for infringement of United States Patent No. 5,893,071 (the “‘071 Patent”).

PARTIES AND JURISDICTION

1. This is an action for patent infringement under Title 35 of the United States Code. Plaintiff is seeking injunctive relief as well as damages.

2. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 (Federal Question) and 1338(a) (Patents) because this is a civil action for patent infringement arising under the United States patent statutes.

3. Plaintiff Annuitek, LLC (“Plaintiff” or “Annuitek”) is a Texas limited liability company with its principal office located in the Eastern District of Texas, at 719 W. Front Street, Suite 211, Tyler, Texas 75702.

4. Upon information and belief, Defendant Aviva Life and Annuity Company (“Defendant”) is domiciled in Iowa and has a principal office located at 7700 Mills Civic Parkway, West Des Moines, Iowa 50266. This Court has personal jurisdiction over Defendant because Defendant has committed, and continues to commit, acts of infringement in the state of Texas, has

conducted business in the state of Texas, and/or has engaged in continuous and systematic activities in the state of Texas. Specifically, and without limitation, Defendant has obtained a license and authorization from the Texas Department of Insurance to sell annuities in Texas, and Defendant currently sells annuities throughout Texas under Texas Department of Insurance License Number 14600.

5. On information and belief, Defendant's computer-implemented systems and methods for the sale, establishment, processing, monitoring, maintenance and administration of annuity products, which are alleged herein to infringe, were and/or continue to be used and/or made in the Eastern District of Texas.

VENUE

6. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because Defendant is deemed to reside in this district. In addition, and in the alternative, Defendant has committed acts of infringement in this district.

COUNT I **(INFRINGEMENT OF UNITED STATES PATENT NO. 5,893,071)**

7. Plaintiff incorporates paragraphs 1 through 6 herein by reference.

8. This cause of action arises under the patent laws of the United States, and in particular, 35 U.S.C. §§ 271, *et seq.*

9. Plaintiff is the owner by assignment of the '071 Patent with sole rights to enforce the '071 Patent and sue infringers.

10. A copy of the '071 Patent, titled "Annuity Value Software," is attached hereto as Exhibit A.

11. The '071 Patent is valid and enforceable, and it was duly issued in full compliance with Title 35 of the United States Code.

12. The '071 Patent is a prominent, pioneering patent in the field of computer-implemented systems and methods for annuities. This is evidenced in part by the extent to which the '071 Patent has been forward-cited as prior art in connection with the examination of subsequently-issued U.S. patents. The '071 Patent has been forward-cited in approximately 75 subsequently-issued U.S. patents to date, including patents originally assigned to such prominent insurance and annuity companies as The Hartford (33 times), Prudential (13 times), Lincoln National (6 times), Guardian (4 times), New York Life (2 times), Alliance, Mass Mutual, and Met Life.

(Direct Infringement)

13. Upon information and belief, Defendant has infringed and continues to directly infringe one or more claims of the '071 Patent, including at least claims 11 and 19, by using and/or making computer-implemented systems and methods in connection with the sale, establishment, processing, monitoring, maintenance and administration of annuity products such as Defendant's Income Preferred Bonus Series, Income Select Series, Lifetime Solutions Annuity Series, TargetHorizon Series, Income Edge Series, TargetPay Income Benefit Rider, MultiChoice Series Annuity, InsurePay Riders, LifetimePay Riders, BPASelect Annuity Series, Balanced Allocation Annuity Series, BPASelect Income Riders, Aviva Progressive Index Annuity, Aviva Elite Index Annuity, Aviva Integrity Index Annuity, Asset Builder 201, Capital Builer 201, Wealth Builder 201, Aviva Performance Max, Aviva Performance Plus, Consumer Annuity, Family SafeGuard Deferred Annuity, ValueGuard, Saver's Advantage 600, Saver's Advantage 900, Family Solution Immediate Annuity, and SPIA 2 products.

14. Defendant's actions complained of herein are causing irreparable harm and monetary damage to Plaintiff and will continue to do so unless and until Defendant is enjoined and restrained by this Court.

15. Plaintiff is in compliance with 35 U.S.C. § 287.

DEMAND FOR JURY TRIAL

Plaintiff, under Rule 38 of the Federal Rules of Civil Procedure, requests a trial by jury of all issues so triable by right.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court to:

- a) Enter judgment for Plaintiff on this Complaint on all causes of action asserted herein;
- b) Enjoin Defendant, its agents, officers, servants, employees, attorneys and all persons in active concert or participation with Defendant who receive notice of the order from further infringement of United States Patent No. 5,893,071;
- c) Award Plaintiff damages resulting from Defendant's infringement in accordance with 35 U.S.C. § 284;
- d) Award Plaintiff pre-judgment and post-judgment interest and costs; and
- e) Award Plaintiff such further relief to which the Court finds Plaintiff entitled under law or equity.

Dated: October 30, 2013

Respectfully submitted,

/s/ Craig Tadlock
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