

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

CON-WAY INC.,

Plaintiff,

v.

Case No. _____

ECLIPSE IP LLC,

JURY TRIAL DEMANDED

Defendant.

_____/

J. Michael Huget (P39150)
Charles W. Duncan, Jr. (P75288)
HONIGMAN MILLER SCHWARTZ AND COHN LLP
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_____ /

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Con-way Inc., by and through its attorneys Honigman Miller Schwartz and Cohn LLP, hereby provides its Complaint for Declaratory Judgment against Defendant Eclipse IP LLC.

THE PARTIES

1. Plaintiff Con-way Inc. (“Plaintiff”) is a corporation organized and existing under the laws of Delaware with its principal place of business at 2211 Old Earhart Road, Suite 100, Ann Arbor, Michigan 48105.

2. Plaintiff is a freight transportation and logistics services company headquartered in Ann Arbor, Michigan. Through its various operating units, Plaintiff performs freight transportation, logistics, and warehousing services, supply chain management, and trailer manufacturing. Plaintiff operates throughout North America and in 20 countries and five continents.

3. On information and belief, Defendant Eclipse IP LLC (“Defendant”) is a limited liability company organized and existing under the laws of Florida with a principal place of business at 115 NW 17th Street, Delray Beach, Florida 33444.

4. Defendant claims to own several patents but, on information and belief, does not practice them. Rather, on information and belief, Plaintiff’s primary source of revenue is patent licensing.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, because it is a claim for declaratory judgment arising under the laws of the United States.

6. This Court has personal jurisdiction over Defendant pursuant to Fed. R. Civ. P. 4(k)(1)(A) and M.C.L. § 600.715 because *inter alia* Defendant has directed the correspondence and other communications giving rise to the present action to Plaintiff's offices in Michigan.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2).

DEFENDANT'S ACCUSATIONS OF INFRINGEMENT

8. On December 16, 2013, Defendant, through counsel, sent a letter to Plaintiff accusing it of infringing numerous patents—including U.S. Patent Nos. 7,876,239 (“the ‘239 patent,” attached hereto as Exhibit A) and 7,479,899 (“the ‘899 patent,” attached hereto as Exhibit B)—and offering to license those patents to Plaintiff for a lump sum payment of \$125,000.00. *See* Ex. C, 2013-12-16 Harman Ltr. to Krull.

9. The ‘239 patent is titled “Secure notification messaging systems and methods using authentication indicia” and claims *inter alia* a method for a computer-based notification system comprising various steps. Defendant's December 16, 2013 letter asserts that Plaintiff practices this method by providing shipment status emails to its customers. *See* Ex. C.

10. The ‘899 patent is titled “Notification systems and methods enabling a response to cause connection between a notified PCD and a delivery or pickup representative” and claims *inter alia* a method for an automated notification system

comprising various steps. Defendant's December 16, 2013 letter asserts that Plaintiff infringes this patent by providing automated shipment status updates to its customers. *See* Ex. C.

11. Plaintiff responded to Defendant's letter by telephone denying liability for patent infringement and requesting a copy of Defendant's proposed license agreement, which Defendant provided. *See* Ex. D, Form – "Settlement, Release, and License Agreement."

12. Plaintiff has attempted to negotiate an amicable solution to this dispute, but has been unable to do so.

13. Presently the parties are at an impasse.

14. In its December 16, 2013 letter, Defendant stated, "If we cannot resolve this situation by January 10, 2014, Eclipse IP will assume that you are not interested in resolving this matter without litigation." *See* Ex. C. On March 10, 2014, Defendant's representative further indicated that this matter has been referred to its outside counsel for handling. Plaintiff understood this as an imminent threat to sue for patent infringement.

15. Notwithstanding, Plaintiff continues to practice—within this judicial district and elsewhere—the shipment status emails and updates that Defendant has asserted infringe the '239 and '899 patents.

16. Accordingly, the parties have an actual case or controversy concerning whether Plaintiff has infringed any valid and enforceable claim of the '239 or '899 patents.

17. Defendant's statements and actions, as set forth above, show that there is a substantial controversy—between parties having adverse legal interests—of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

**COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

18. Plaintiff reincorporates and realleges the allegations of the above paragraphs as if fully set forth herein.

19. Defendant has asserted that Plaintiff infringes the '239 and '899 patents by providing its customers shipment status emails and updates.

20. Plaintiff's practice of providing shipment status emails and updates does not infringe any claim of the '239 and '899 patent because it does not satisfy all limitations of any of those claims.

21. Plaintiff is entitled to a declaratory judgment that it has not infringed and does not infringe either the '239 or '899 patent.

**COUNT II
DECLARATORY JUDGMENT OF INVALIDITY**

22. Plaintiff reincorporates and realleges the allegations of the above paragraphs as if fully set forth herein.

23. One or more claims of both the '239 and '899 patents are invalid under the United States Patent Act, 35 U.S.C. § 1 et seq., including 35 U.S.C. §§ 101, 102, 103, and/or 112.

24. One or more claims of the both the '239 and '899 patents are invalid pursuant to 35 U.S.C. §§ 102 and/or 103 because they are anticipated and/or rendered obvious by the prior art.

25. One or more claims of both the '239 and '899 patents are invalid pursuant to 35 U.S.C. § 102(f) because the applicant and sole named inventor did not himself invent the subject matter sought.

26. One or more claims of both the '239 and '899 patents are invalid pursuant to 35 U.S.C. § 112 because they are indefinite, not enabled, and/or lack sufficient written description.

27. Plaintiff is entitled to a declaratory judgment that the claims of the '239 and '899 patents are invalid.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in its favor and grant the following relief:

- a. Declare that Plaintiff does not infringe any claim of the '239 or '899 patents;
- b. Declare that the claims of the '239 and '899 patents are invalid;
- c. Declare that this is an exceptional case and award Plaintiff its reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- d. Award to Plaintiff its costs and disbursements associated with this action;
and
- e. Award any additional relief as the Court may deem appropriate and just under the circumstances.

Respectfully submitted,

By: /s/ J. Michael Huget
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Dated: March 12, 2014

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