

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SONY ELECTRONICS INC. and)	
SONY PUERTO RICO, INC.,)	
)	
Plaintiffs,)	C.A. No.
)	
v.)	JURY TRIAL DEMANDED
)	
TAINOAPP, INC.,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT OF NONINFRINGEMENT

Plaintiffs Sony Electronics Inc. (“SEL”) and Sony Puerto Rico, Inc. (“SPR”), by and through their undersigned attorneys, hereby bring this action against Defendant TainoApp, Inc. (“TainoApp”) and request a jury trial on all issues so triable. Plaintiffs allege, on their own personal knowledge as to their own activities and on information and belief as to all other matters as follows:

THE PARTIES

1. Plaintiff SEL is a corporation organized under the laws of Delaware and maintains its principal place of business at 16530 Via Esprillo, San Diego, California.
2. Plaintiff SPR is a corporation organized under the laws of Puerto Rico and maintains its principal place of business at Calle Diana, Suite A, Amelia Distribution Center, Guaynabo, Puerto Rico 00963.
3. On information and belief, Defendant TainoApp is a corporation organized under the laws of Puerto Rico and maintains its principal place of business at 229 Del Parque St., Suite #1401, San Juan, Puerto Rico 00912.
4. On information and belief, TainoApp can be served with process through its agent Jorge Castro at Martinal Plaza Calle Aldea, 1414 Apt 402, San Juan, Puerto Rico 00907.

NATURE OF THE ACTION

5. This is an action for declaratory judgment arising under 28 U.S.C. § 2201. The subject matter of this declaratory judgment action arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

JURISDICTION AND VENUE

6. On March 14, 2014, TainoApp filed a Complaint for patent infringement against SEL in the U.S. District Court of Puerto Rico, in a case captioned as *TainoApp, Inc. v. Sony Electronics, Inc.*, Case No. 3:14-cv-01215-PAD (D.P.R.) (the “Puerto Rico case.”).

7. In its Complaint in the Puerto Rico case, TainoApp alleges that SEL infringed U.S. Patent No. 7,034,791 (the “’791 Patent”) and U.S. Patent No. 8,629,890 (the “’890 Patent”). A copy of the ’791 Patent is attached as Exhibit A. A copy of the ’890 Patent is attached as Exhibit B.

8. In the U.S. District Court of Delaware, TainoApp filed a Complaint against Kobo, Inc. and Buy.com Inc. d/b/a Rakuten.com Shopping (collectively, “Kobo”) on March 25, 2014, alleging that Kobo infringed the ’791 Patent. *TainoApp v. Kobo, Inc. et al.*, Case No. 1:14-cv-00381-GMS (D.Del. filed Mar. 25, 2014).

9. SEL and SPR had no notice of the ’791 and ’890 Patents at least before the Complaint in the Puerto Rico case was filed against SEL.

10. In the Puerto Rico case, TainoApp accuses “digital video display devices that include a display screen processing unit and are configured to minimize display screen updating in order to save battery life,” such as the Vaio Tap 11 (the “’890 Accused Product”), of infringing at least claim 1 of the ’890 patent (the “’890 Asserted Claim”).

11. In the Puerto Rico case, TainoApp alleges that SEL “directly infringes one or more claims of the ’890 Patent by using, selling, offering to sell, and/or importing the Accused Products.”

12. TainoApp further alleges that SEL indirectly infringed and continues to indirectly infringe the ’890 Patent by inducing others to infringe and contributorily infringing the ’890 Patent.

13. In the Puerto Rico case, TainoApp also accuses products “that minimize display screen updating,” such as the Reader PRS-T2 (the “’791 Accused Product”), of infringing at least claim 17 of the ’791 patent (the “’791 Asserted Claim”).

14. TainoApp asserts that SEL “directly infringes at least claim 17 of the ’791 Patent. For example, without limitation, [SEL] directly infringes the ’791 Patent by using the Accused Products, including use by [SEL’s] employees and agents, and use during product development and testing processes.”

15. TainoApp further alleges, in the Puerto Rico case, that SEL indirectly infringed and continues to indirectly infringe the ’791 Patent by inducing infringement of or contributorily infringing the ’791 Patent.

16. On its face, the ’890 Patent purports to be a “[c]ontinuation of application No. 09/908,166, filed on Jul. 18, 2001, now Pat. No. 7,034,791.”

17. The ’890 Patent was filed more than four months after the ’791 Patent issued.

18. SEL denied and continues to deny in the Puerto Rico case that it has infringed or is infringing, directly or indirectly, the ’791 Patent or the ’890 Patent.

19. In the Puerto Rico case, SEL denied that the U.S. District Court of Puerto Rico has personal jurisdiction over it because, for example, and without limitation, SEL has no

presence in Puerto Rico; does not have any stores, offices or research, development or manufacturing facilities in Puerto Rico; does not own or rent property in Puerto Rico; does not have any employees in Puerto Rico; does not make, use, sell, or offer to sell the '890 Accused Product or the '791 Accused Product in Puerto Rico, or import the '890 Accused Product or the '791 Accused Product through Puerto Rico, does not ship the '890 Accused Product or the '791 Accused Product to Puerto Rico; does not pay income taxes in Puerto Rico; does not market or advertise in any Puerto Rico publication or Puerto Rico broadcast medium; and does not specifically target any marketing, advertising, or business solicitations to Puerto Rico.

20. SPR distributes and sells certain Sony branded products in Puerto Rico.

21. TainoApp and SPR have adverse legal interests in that TainoApp has asserted that at least two Sony branded products allegedly sold in Puerto Rico by a Sony entity infringe the '791 and '890 Patents.

22. Because SPR distributes and sells Sony branded products in Puerto Rico, it is reasonable for SPR to believe that TainoApp will seek to assert the '791 and '890 Patents against it.

23. Accordingly, there is a substantial actual and justiciable controversy between TainoApp and SEL and SPR with respect to the infringement of the '791 patent and the '890 patent by the two Sony branded products identified in TainoApp's Puerto Rico complaint. This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment by this Court.

24. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

25. This Court has personal jurisdiction over TainoApp because it (i) avails itself of the benefits of this judicial district, including the jurisdiction of the courts, (ii) has sought to enforce its patent rights in this judicial district including its alleged rights in the '791 patent, and (iii) has previously served SEL with process in this district.

26. Venue is proper in this Court, pursuant to 28 U.S.C. §§ 1391(b) and (c) and/or 1400(b).

COUNT I – NONINFRINGEMENT OF U.S. PATENT NO. 7,034,791

27. SEL and SPR re-allege and incorporate by reference the allegations set forth in paragraphs 1 to 26.

28. SEL and SPR have not infringed and are not infringing, either directly or indirectly, any disputed claim of the '791 patent, either literally or under the doctrine of equivalents.

29. Without limiting the generality of the foregoing and by way of example only, SPR has not and does not make, use, sell, or offer for sale, in the United States, or imported into the United States, the '791 Accused Product.

30. Without limiting the generality of the foregoing and by way of example, the '791 Asserted Claim is a method claim, and can be directly infringed only by "using" the claimed method. SEL and SPR have not used and are not using in the United States the claimed method.

31. Without limiting the generality of the foregoing and by way of example only, use, or sale of, offers for sale of the '791 Accused Product in the United States, and importation of the '791 Accused Product into the United States, do not meet, either literally or under the doctrine of equivalents, at least the following claim elements of the '791 Asserted Claim: (a) "a display processing unit receiving for display a first data block of a first type designated for a first

specified area of said display screen”; (b) “wherein said first area excludes at least a second area of said display screen”; and (c) “said display processing unit receiving for display a third data block of said first type designated for said first specified area of said display screen.”

32. Without limiting the generality of the foregoing and by way of example only, neither SEL nor SPR has induced or are inducing anyone to infringe any disputed claim of the '791 Patent, at least because: (a) there is no predicate act of direct infringement of any disputed claim of the '791 Patent; (b) SEL and SPR did not have notice of the '791 Patent at least until after the Complaint was filed in the Puerto Rico case; (c) SEL and SPR have not had and do not have the specific intent to cause another to infringe because they have had and continue to have a good faith and an objectively reasonable belief that any disputed claim of the '791 Patent is not infringed by users of the accused products, and/or is invalid or unenforceable; and (d) SPR does not and has not sold or offered to sell the '791 Accused Product.

33. Without limiting the generality of the foregoing and by way of example only, neither SEL nor SPR has contributorily infringed or is contributorily infringing any disputed claim of the '791 Patent at least because: (a) there is no predicate act of direct infringement of any disputed claim of the '791 Patent; (b) SEL and SPR did not have notice of the '791 Patent at least until after the Complaint was filed in the Puerto Rico case.; (c) SPR does not and has not sold or offered to sell the '791 Accused Product; (d) SEL and SPR have not had and do not have the knowledge of infringement required to be a contributory infringer because they have had and continue to have a good faith and an objectively reasonable belief that any disputed claim of the '791 Patent is not infringed by users of the '791 Accused Product and/or is invalid or unenforceable; and (e) the '791 Accused Product has substantial noninfringing uses.

COUNT II – NONINFRINGEMENT OF U.S. PATENT NO. 8,629,890

34. SEL and SPR re-allege and incorporate by reference the allegations set forth in paragraphs 1 to 33.

35. SEL and SPR have not infringed and are not infringing, either directly or indirectly, any disputed claim of the '890 Patent, either literally or under the doctrine of equivalents.

36. Without limiting the generality of the foregoing and by way of example only, the '890 Accused Product does not meet, either literally or under the doctrine of equivalents, the limitations of any disputed claim of the '890 Patent.

37. Without limiting the generality of the foregoing and by way of example only, the '890 Accused Product does not meet at least the following elements of the '890 Asserted Claim: (a) "each pixel being capable of showing a sustained image on the display screen"; (b) "to receive and cause to be shown on at least the first portion of the display screen first images and second images that are received in a manner to indicate a required update rate for each image received"; (c) "first images being updated at a first rate that is lower than a second rate at which second images are to be updated"; (d) "to cause the pixels in the first portion of the display to be updated at the first rate when first images are to be shown on the first portion of the display"; and (e) "to cause the pixels in the first portion of the display to be updated at the second rate when second images are to be shown on the display to thereby enhance quality of the second images displayed."

38. Without limiting the generality of the foregoing and by way of example only, SEL and SPR did not have notice of the '890 Patent until at least after the Complaint was filed in the Puerto Rico case.

39. Without limiting the generality of the foregoing and by way of example only, neither SEL nor SPR has induced or are inducing anyone to infringe any disputed claim of the '890 Patent, at least because: (a) there is no predicate act of direct infringement of any disputed claim of the '890 Patent; (b) SEL and SPR did not have notice of the '890 Patent at least until after the Complaint was filed in the Puerto Rico case; and (c) SEL and SPR have not had and do not have the specific intent to cause another to infringe because they have had and continue to have a good faith and an objectively reasonable belief that any disputed claim of the '890 Patent is not infringed by users of the accused products, and/or is invalid or unenforceable.

40. Without limiting the generality of the foregoing and by way of example only, neither SEL nor SPR has contributorily infringed or is contributorily infringing any disputed claim of the '890 Patent at least because: (a) there is no predicate act of direct infringement of any disputed claim of the '890 Patent; (b) SEL and SPR did not have notice of the '890 Patent at least until after the Complaint was filed in the Puerto Rico case.; (c) SEL and SPR have not had and do not have the knowledge of infringement required to be a contributory infringer because they have had and continue to have a good faith and an objectively reasonable belief that any disputed claim of the '890 Patent is not infringed by users of the '890 Accused Product and/or is invalid or unenforceable; and (d) the '890 Accused Product has substantial noninfringing uses.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs SEL and SPR hereby pray that the Court enter judgment as follows:

(a) Declaring that SEL and SPR do not infringe, either literally and/or under the doctrine of equivalents, any disputed claim of the '791 Patent, and that SEL and SPR

do not contribute to and/or induce any third parties to infringe any disputed claim of the '791 Patent;

(b) Declaring that SEL and SPR do not infringe, either literally and/or under the doctrine of equivalents, any disputed claim of the '890 Patent, and that SEL and SPR do not contribute to and/or induce any third parties to infringe any disputed claim of the '890 Patent;

(c) Declaring that TainoApp and its officers, agents, employees, representatives, counsel, and all persons in active concert or participation with any of them, directly or indirectly, be enjoined from threatening or charging infringement of, or instituting or continuing any action for infringement of the '791 or '890 Patents against SEL or SPR;

(d) Declaring this an exceptional case under 35 U.S.C. § 285;

(e) Awarding SEL and SPR their costs and expenses and reasonable attorneys' fees; and

(f) Granting such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiffs SEL and SPR respectfully demand a jury trial on all issues so triable.

Respectfully submitted,

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