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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

CARILOHA, LLC, a Utah limited liability company, Plaintiff, v. ECLIPSE IP LLC, a Texas limited liability company, Defendant.	Civil Action No. 2:15-cv-00168-RJS **COMPLAINT** Judge Robert J. Shelby **Demand for Jury Trial**

Plaintiff, Cariloha, LLC ("Cariloha"), for its Complaint alleges against Defendant, Eclipse IP LLC ("Eclipse") as follows:

THE PARTIES

1. Cariloha is a Utah limited liability company with a principle place of business at 280 West 10200 South, Sandy, Utah 84070.

2. On information and belief, Eclipse is a Texas limited liability company with a principle place of business at 711 SW 24th, Boyton Beach, Florida 33435.

NATURE OF THE ACTION

3. This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202. Eclipse has raised a reasonable apprehension of the filing of a lawsuit against Cariloha, resulting in the establishment of a case or controversy between the parties relating to a United States patent as set forth below. Accordingly, this action arises under the patent laws of the United States, including 35 U.S.C. §§ 271, 281, and 283-85.

4. This is also an action for a related claim for violation of the Distribution of Bad Faith Patent Infringement Letters Act, Utah Code Ann. § 78B-6-1901 *et seq.*

JURISDICTION AND VENUE

5. This Court has original jurisdiction over the declaratory judgment claim pursuant to at least 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202. This Court has supplemental jurisdiction over the Distribution of Bad Faith Patent Infringement Letters Act claim because it arises out of the same acts that give rise to the declaratory judgment claim.

6. On information and belief, Eclipse's sole business operations consist of using actual or threatened patent litigation to coerce businesses to license its patent portfolio. On information and belief, Eclipse provides no other product or service. Eclipse sent a letter dated February 20, 2015 to Cariloha in Utah alleging that Cariloha infringes the claims of at least one of the alleged 21 patents in Eclipse's patent portfolio and demanding that Cariloha take a license to Eclipse's entire patent portfolio (the "Demand Letter"). A true and correct copy of the Demand Letter is provided as Exhibit A. Eclipse's sending the Demand Letter to Cariloha in Utah constitutes a business tort in Utah because the Demand Letter violates the Distribution of Bad Faith Patent Infringement Letters Act.

7. On information and belief, Eclipse also has purposely availed itself of the privileges and benefits of the laws of the State of Utah and otherwise conducted business in Utah, including at least licensing its patent portfolio to companies residing in Utah. On information and belief, Eclipse's patent licensing and business activities in the State of Utah constitute continuous and systematic contacts with Utah. Eclipse is therefore subject to specific and general personal jurisdiction in this Court pursuant to Utah Code Ann. § 78-27-24.

8. Venue is proper in this district pursuant to at least 28 U.S.C. § 1391(b).

BACKGROUND

9. Cariloha, a Utah-based company, markets and sells unique clothing, bedding, and bath products made from a proprietary blend of bamboo. Cariloha markets and sells its products in over fifty stores spread across fourteen countries, and online through its website www.cariloha.com.

10. On information and belief, Eclipse does not offer any product or service. On information and belief, Eclipse owns a patent portfolio but does not manufacture, market, or sell any products or services covered by its patents, making it a "non-practicing entity," more commonly known as a "patent troll." On information and belief, Eclipse's business model is to use the threat of expensive patent infringement litigation to coerce businesses to purchase blanket licenses for its entire patent portfolio at cost that is far less than the cost to defend against even frivolous patent infringement claims. On information and belief, Eclipse has filed over one hundred patent infringement lawsuits. Virtually every one of these lawsuits has been dismissed in the early stages of litigation. On information and belief, Eclipse and has licensed its patent portfolio to more than seventy companies as result of its patent trolling activities.

11. On February 20, 2015, Eclipse sent the Demand Letter to the CEO of Cariloha, demanding that Cariloha take a blanket license to Eclipse's patent portfolio for $45,000 or be sued for infringing at least U.S. Patent No. 7,479,899 (the "'899 patent"). A true and correct copy of the '899 patent is provided as Exhibit B.

12. On February 26, 2015, Edward Turnbill, an individual associated with Eclipse, called Cariloha regarding the Demand Letter sent to Cariloha by their law firm Olavi Dunne LLP. In the message left by Mr. Turnbill, he asked that Cariloha have their lawyer return his call.

13. The '899 patent is titled "Notification System and Methods Enabling a Response to Cause Connection between a Notified PCD and a Delivery or Pickup Representative."

14. The '899 patent is just one patent of a family of related patents owned by Eclipse. The family of related patents includes U.S. Patent Nos. 7,119,716 (the "'716 patent"), 7,064,681 (the "'681 patent"), and 7,113,110 (the "'110 patent"). The '716 patent is the "parent" patent, to which the '899, '681 and '110 patents each is a "child" continuation patent. This means that all four of these patents share the exact same disclosure.

15. On May 13, 2014, Eclipse filed a patent infringement lawsuit to enforce the '716, '681 and '110 patents against McKinley Equipment Corporation in the Central District of California.

16. On June 19, 2014, the Supreme Court issued *Alice Corp. Pty. v. CLS Bank International et al.*, 134 S. Ct. 2347 (2014) addressing the issue of patentable subject matter for software and method patents under 35 U.S.C § 101.

17. In view of the Supreme Court's holding in *Alice*, McKinley Equipment Corporation moved to dismiss Eclipse's claims alleging that each of Eclipse's asserted claims in the '716, '681 and '110 patents is invalid for unpatentable subject matter. Applying *Alice,* the Central District of California granted the motion to dismiss, holding that each of the asserted claims in the '716, '681 and '110 patents is invalid for claiming an abstract idea that is not patentable subject matter under 35 U.S.C. § 101. A true and correct copy of the Ruling on Motion to Dismiss for Lack of Patentable Subject Matter (35 U.S.C § 101) invalidating each asserted claim of the '716, '681 and '110 patents is provided as Exhibit C.

18. Each of the '716, '681, and '110 patents were each directed toward technology and methods related to tracking items (such as delivery trucks) and providing notifications to the personal communication devices of persons interested in the tracking information (such as the shipping company or addressee of a delivery).

19. Whereas the '899 patent shares the same disclosure as the '716, '681 and '110 patents, it is no surprise that the '899 patent is also directed to technology and methods related to tracking items and providing notifications. Specifically, the general invention claimed in the '899 patent is directed to monitoring a "mobile thing that is destined to pickup or deliver an item," (e.g., a delivery truck) sending a notification to a "personal communications device" (e.g., a cellular telephone) regarding the location of the "mobile thing," and allowing the party receiving the notification (e.g., the addressee of a delivery) to "select whether or not to communicate" with the party that has information about the pickup or delivery (e.g., the shipper). As the Central District of California found with regard to the asserted claims in the '716, '681

and ’110 patents, upon information and belief the claims of the related ’899 patent are invalid under 35 U.S.C. § 101 for claiming an unpatentable abstract idea.

20. Claim 1 of the ’899 patent is the only specific claim identified by Eclipse in the Demand Letter as being infringed by Cariloha. Claim 1 of the ’899 patent is very similar to the now invalid claim 1 of the ’110 patent, except that it allows the party receiving a notification to select whether to communicate with a party having information about the delivery or pickup (the ’899 patent) instead of producing a list of stops for a vehicle rout. There is no difference between the claims with regard to whether the claimed method is an “abstract idea” that does not constitute patentable subject matter under 35 U.S.C. § 101.

CLAIM ONE

(Violation of the Distribution of Bad Faith Patent Infringement Letters Act, Utah Code Ann. § 78B-6-1901 *et seq.*)

21. Cariloha hereby incorporates the allegations of the preceding paragraphs of this Complaint as though fully set forth in this claim.

22. Eclipse’s Demand Letter was sent in a bad faith effort to use the threat of expensive patent litigation to coerce Cariloha into taking a blanket license for Eclipse’s patent portfolio despite the invalidity of the claims of the ’899 patent and the lack of infringement of those claims by Cariloha.

23. That the Demand Letter was sent in bad faith is evidenced by the fact that although the Demand Letter demands that Cariloha take a blanket license to Eclipse’s entire patent portfolio allegedly including twenty-one patents, the Demand Letter does not identify each of the patents in that portfolio. Similarly, the Demand Letter also does not identify each of the twenty-one patents that Eclipse alleges is infringed. Instead, the Demand Letter threatens

litigation on claims that cannot be analyzed by stating, "After a careful review, Eclipse has determined that your computer-based automated notification systems infringe claims of at least the patent identified below, **and may possibly infringe claims of other patents in Eclipse's portfolio**." (Exhibit A, emphasis added.) The Demand Letter also contains additional vague statements and allegations that Eclipse believes that Cariloha infringes more than one patent, including the subject line "United States Patent Nos. 7,479,899 ***et al.***" and the statement, "While there is no requirement that Cariloha generate the travel data to infringe **these patents** . . . ." (Exhibit A (emphasis added).)

24. That the Demand Letter was sent in bad faith is evidenced by the fact that the Demand Letter does not provide the name and address of the current patent owner and any person or entity having the right to enforce or license the patents in Eclipse's patent portfolio.

25. That the Demand Letter was sent in bad faith is evidenced by the fact that the Demand Letter does not provide the name and address of all persons and entities holding a controlling interest in the entity or entities having the right to enforce or license the patents in Eclipse's patent portfolio.

26. That the Demand Letter was sent in bad faith is evidenced by the fact that the Demand Letter does not describe the system or method accused of infringing the '899 patent with sufficient specificity for Cariloha to assess the merits of Eclipse's patent infringement allegation. To the contrary, the Demand Letter expressly introduces ambiguity into Eclipse's infringement allegation by stating, "As indicated above, [the patent claim term] 'monitoring travel data' is defined broadly by the Eclipse Patents. While there is no requirement that

Cariloha generate the travel data to infringe these patents, the term does include many types of data that are gathered at Cariloha's facilities and monitored by Cariloha's computer systems."

27. In stating the allegation that Cariloha infringes claim 1 of the '899 patent, the Demand Letter also does not identify the claimed "mobile thing" for which travel data is monitored, or what "item" the "mobile thing" is "destined to pickup or deliver . . . at a stop location." To the contrary, the Demand Letter expressly states, "Please note that Eclipse IP's claims of patent infringement are not directed to products or services provided by any shipping company, or actions performed by any such company."

28. On information and belief, Eclipse has already separately licensed the '899 patent to shipping companies such as Federal Express and others. Thus, on information and belief, Eclipse expressly excludes the products and services provided by shipping companies from its infringement allegations because the doctrine of patent exhaustion precludes Eclipse from obtaining additional licenses from others based on the products and services provided by the shipping companies Eclipse has already licensed.

29. Whereas Cariloha ships all products ordered by customers online using shipping companies, and Eclipse expressly states that the allegation of infringement does not involve any product or service provided by any shipping company, Cariloha has no travel data for a "mobile thing that is destined to pickup or deliver an item at a stop location" as required by claim1 of the '899 patent. Thus, Eclipse has no reasonable basis to support its allegation of patent infringement of claim 1 of the '899 patent.

30. That the Demand Letter was sent in bad faith is evidenced by the fact that the Demand Letter does not identify each judicial or administrative proceeding pending as of the

date of the Demand Letter where the validity of the '899 patent, and any other patent Eclipse alleges Cariloha infringes, is under challenge.

31. That the Demand Letter was sent in bad faith is evidenced by the fact that the Demand Letter requires that Cariloha "resolve the matter" within thirty-five days of the date of the Demand Letter to avoid litigation.

32. That the Demand Letter was sent in bad faith is evidenced by the fact the blanket licensing fee demanded in the Demand Letter has no relation to the number of patents allegedly being used by Cariloha, or to the extent of Cariloha's alleged use of Eclipse's patented technology.

33. That the Demand Letter was sent in bad faith is evidenced by the fact that the Demand Letter expressly raises Eclipse's prior litigation and licensing activities to intimidate Cariloha into taking a blanket license.

34. That the Demand Letter was sent in bad faith is evidenced by Eclipse's knowledge that the '899 patent is invalid under 35 U.S.C. § 101 in view of the Supreme Court's decision in *Alice,* the invalidity of the claims of the related '716, '681 and '110 patents, and the insubstantial difference between those invalid claims and the claims of the '899 patent.

35. Eclipse's violation of the Distribution of Bad Faith Patent Infringement Act set forth herein entitles Cariloha to recover its actual damages, its costs and attorneys' fees incurred in connection with this Action, and punitive damages in the amount of three times its total actual damages, costs and attorneys' fees, or $50,000, whichever is greater. Cariloha is also entitled to equitable relief.

CLAIM TWO

(Declaratory Judgment of Patent Invalidity)

36. Cariloha hereby incorporates the allegations of the preceding paragraphs of this Complaint as though fully set forth in this claim.

37. As a result of Eclipse's sending the Demand Letter, the call from Eclipse, its history of filing claims for patent infringement, and the other facts set forth herein, there is an actual and substantial case or controversy between Cariloha and Eclipse of sufficient immediacy and reality to warrant the issuance of a declaratory judgment on the invalidity of the claims of the '899 patent.

38. Each of the claims of the '899 patent is invalid under 35 U.S.C. § 101 because it is directed to unpatentable abstract ideas.

39. Each of the claims of the '899 patent is invalid under 35 U.S.C. § 112 because it is indefinite, not enabled, or lacks sufficient written description.

40. By reason of the foregoing, and pursuant to 28 U.S.C. §§ 2201 and 2202, Cariloha requests a declaration from this Court invalidating the claims of the '899 patent under 35 U.S.C §§ 101 and 112.

CLAIM THREE

(Declaratory Judgment of No Patent Infringement)

41. Cariloha hereby incorporates the allegations of the preceding paragraphs of this Complaint as though fully set forth in this claim.

42. As a result of Eclipse's sending the Demand Letter, the call from Eclipse, its history of filing claims for patent infringement, and the other facts set forth herein, there is an

actual and substantial case or controversy between Cariloha and Eclipse of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that Cariloha does not infringe any valid claim of the ’899 patent.

43. Cariloha does not infringe, and has not infringed, any valid claim of the ’899 patent either directly or indirectly, literally or under the doctrine of equivalents.

44. By reason of the foregoing, and pursuant to 28 U.S.C. §§ 2201 and 2202, Cariloha requests a declaration from this Court that Cariloha does not infringe any valid claim of the ’899 patent.

PRAYER FOR RELIEF

WHEREFORE, Cariloha prays for entry of a final order and judgment against Eclipse that:

1. Eclipse is liable for the bad faith dissemination of a letter of patent infringement under Utah Code Ann. § 78B-6-1901 *et seq.*;
2. The claims of the ’899 patent are invalid;
3. Cariloha does not infringe any valid claim of the ’899 patent;
4. Eclipse pay to Cariloha its actual damages, costs and attorney fees pursuant to Utah Code Ann. § 78B-6-1904(1);
5. Pursuant to § 78B-6-1904(1)(a), Eclipse prepare and provide to Cariloha non-confidential documents that (a) identify each patent owned by or licensed to Eclipse; (b) provide the information identified in Utah Code Ann. § 78B-6-1903(2)(a)(ii), (iii) and (vi); and (c) provide the terms of each license of any

patent licensed by Eclipse, including the name of the licensee, the patent(s) licensed, and the amount each such licensee paid or pays for such license;

6. Eclipse pay to Cariloha punitive damages in the amount of three times Cariloha's damages, costs, and attorneys' fees, or $50,000, whichever is greater, pursuant to Utah Code Ann. § 78B-6-1904(1);

7. Eclipse pay to Cariloha its costs of suit, and pre- and post-judgment interest on any money judgment;

8. Declares this to be an exceptional case pursuant to 35 U.S.C. § 285, and awards Cariloha its reasonable attorneys' fees;

9. Grants Cariloha such other and further relief as the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Cariloha demands that all issues of fact in the Complaint be tried by jury.

DATED this 17th day of March, 2015.

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By /s/*Chad E. Nydegger*
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