15 CV 3893

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YOOX CORP.,	JUDGE SCHOFIELD
Plaintiff,	Civil Action No.
v.	COMPLAINT FOR A DECLARATORY JUDGMENT
LANDMARK TECHNOLOGY, LLC,	
Defendant.	Jury Trial Demanded

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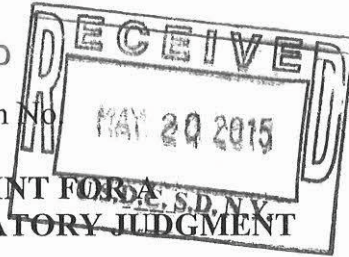
Plaintiff Yoox Corp. ("Yoox") by its attorneys, Tarter Krinsky & Drogin LLP, for its Complaint for a Declaratory Judgment against defendant Landmark Technology, LLC ("Defendant"), alleges as follows:

NATURE OF THE ACTION

1.   This is an action seeking a declaratory judgment that Plaintiff is not infringing United States Patent No. 6,289,319 issued to Lawrence B. Lockwood ("the '319 Patent"). The '319 Patent is attached as Exhibit A. Plaintiff also seeks a declaration that the '319 Patent is invalid.

2.   This is a claim arising under the Patent Laws of the United States, Title 35, United States Code, for a declaratory judgment under Title 28, United States Code §§ 2201 and 2202.

THE PARTIES

3.   Plaintiff Yoox is a corporation organized under the laws of the State of Delaware, with its principal place of business at 148 Lafayette Street, 10th Floor, New York, New York 10013.

4.   Upon information and belief, Defendant is a limited liability company organized under the laws of the State of Delaware with an office at 719 W. Front Street, Suite 157, Tyler, Texas 75702.

JURISDICTION AND VENUE

5.   The jurisdiction of this Court is founded upon Title 28, United States Code §§ 1331, 1332, 1338(a), 2201 and 2202 and upon Title 35, United States Code § 271.

6.   This Court has personal jurisdiction over Defendant because of Defendant's contacts within the State of New York, which include several litigations against companies based in or having offices in New York, including Yoox. Upon information and belief, Defendant has derived and continues to derive substantial revenues from its patent licensing activities from companies having offices in New York.

7.   Jurisdiction is further proper under N.Y.C.P.L.R. § 302(a).

8.   Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391.

BACKGROUND

9.   On or about September 11, 2001, the U.S. Patent & Trademark Office issued the '319 Patent, entitled "Automatic Business and Financial Transaction Processing System" and including claims 1-6. A Reexamination Certificate for the '319 Patent issued on July 17, 2007, adding claims 7-28. A second Reexamination Certificate for the '319 Patent issued on January 9, 2013, with a total of 28 claims.

10.   Defendant purports and claims to own, and have the right to enforce, the '319 Patent.

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11.   Upon information and belief, Defendant is a non-practicing entity that has filed over 130 separate litigations in the Eastern District of Texas against various entities alleging infringement of its patents.

12.   Defendant accused Yoox's of infringing the '319 Patent in a letter dated September 19, 2014, addressed to Yoox at its New York office. A copy of this letter is attached as Exhibit B.

13.   Defendant provided an online presentation to Yoox on November 7, 2014, alleging that Yoox infringes the '319 Patent.

14.   Defendant filed a complaint against Yoox on January 23, 2015, in the United States District Court for the Eastern District of Texas (Tyler Division), alleging infringement of the '319 Patent by Yoox (Case No. 6:15-CV-00069).

15.   Defendant filed an amended complaint against Yoox on April 22, 2015, in the United States District Court for the Eastern District of Texas (Tyler Division), alleging infringement of the '319 Patent by Yoox (Case No. 6:15-CV-00069).

16.   Defendant provided its Infringement Contentions under the Local Patent Rules of the Eastern District of Texas on May 11, 2015, alleging that the Yoox.com mobile software application ("the Yoox App") and associated source code, Yoox's Servers, users' remote mobile devices and other components collectively combined together (hereinafter, the "Accused System") infringe each asserted claim of the '319 Patent. Defendant's Infringement Contentions are attached as Exhibit C.

17.   Yoox is not licensed to do business in the State of Texas, does not have any offices in the State of Texas, does not have any employees located in the State of Texas, and does not have any substantial contacts with the State of Texas. Accordingly,

Yoox contends that the State of Texas does not have jurisdiction over it and that venue in the Eastern District of Texas is improper.

18.   Yoox does not infringe any claim of the '319 Patent under 35 U.S.C. § 271.

19.   One or more of the components of the Accused System alleged to infringe the claims of the '319 Patent are not located in the United States.

20.   One or more of the components of the Accused System alleged to infringe the claims of the '319 Patent are not imported, manufactured, used, sold or offered for sale by Yoox.

21.   One or more of the components of the Accused System alleged to infringe the claims of the '319 Patent are not possessed, owned, controlled or operated by Yoox.

22.   The claims of the '319 Patent are invalid for failing to satisfy one or more conditions for patentability under 35 U.S.C. §§ 101 et seq.

23.   The claims of the '319 Patent are invalid because they recite an abstract idea ineligible for patent protection.

24.   The sole independent claim (claim 1) of the '319 Patent recites a central processor and several means-plus-function clauses as follows:

> 1. An automatic data processing system for processing business and financial transactions between entities from remote sites which comprises:
> **a central processor** programmed and connected to process a variety of inquiries and orders transmitted from said remote sites;
> said central processor including:
> **means for receiving** information about said transactions from said remote sites;
> **means for retrievably storing** said information;
> at least one terminal at each of said remote sites including a data processor and operational sequencing lists of program instructions;

means for remotely linking said terminal to said central processor and for transmitting data back and forth between said central processor and said terminal;

said terminal further comprising means for dispensing information and services for at least one of said entities including:

a video screen;

means for holding operational data including programing, informing, and inquiring sequences of data;

means for manually entering information;

means for storing information, inquires and orders for said transactions entered by one of said entities via said means for manually entering information, and data received through and from said central processor;

on-line means for transmitting said information, inquiries, and orders to said central processor;

on-line means for receiving data comprising operator-selected information and orders from said central processor via said linking means;

means for outputting said informing and inquiring sequences on said video screen in accordance with preset routines and in response to data entered through said means for entering information;

means for controlling said means for storing, means for outputting, and means for transmitting, including means for fetching additional inquiring sequences in response to a plurality of said data entered through said means for entering and in response to information received from said central processor;

said informing sequences including directions for operating said terminal, and for presenting interrelated segments of said operational data describing a plurality of transaction operations;

said programming sequences including **means for interactively controlling** the operation of said video screen, data receiving and transmitting means; and for selectively retrieving said data from said means for storing;

said means for storing comprising means for retaining said operational sequencing list and means responsive to the status of the various means for controlling their operation;

said central processor further including:

means responsive to data received from one of said terminals for immediately transmitting selected stored information to said terminal; and

means responsive to an order received from a terminal for updating data in said means for storing;

whereby said system can be used by said entities, each using one of said terminals to exchange information, and to respond to inquiries and orders instantaneously and over a period of time.

25.   The claims of the '319 Patent, including claim 1 as recited above, are invalid because the specification does not provide any structure for the numerous means-plus-function clauses recited in the claims other than generic computer parts.

26.   Based on the communication received from the Defendant, and the litigation initiated by the Defendant asserting infringement of the'319 Patent, an immediate, real and justiciable controversy exists between Yoox and the Defendant as to the validity of the claims of the '319 Patent, and as to whether the Accused System or any component thereof infringe any valid and enforceable claim of the '319 Patent.

27.   Yoox has suffered, is suffering and will continue to suffer irreparable harm and damage and, unless Defendant is refrained from its wrongful acts, the harm to Yoox will increase.

28.   Yoox has no adequate remedy at law.

FIRST CAUSE OF ACTION
Declaratory Judgment of Non-Infringement

29.   Yoox repeats and realleges each of the allegations above.

30.   Defendant has alleged that the Accused System infringes the claims of the '319 Patent.

31.   Yoox has not infringed and is not infringing, directly or indirectly, any valid and enforceable claim of the '319 patent because Yoox does not make, use, sell, offer for sale or import an apparatus that meets all of the limitations recited in the claims of the '319 Patent.

32.   Yoox has not infringed and is not infringing, directly or indirectly, any valid and enforceable claim of the '319 patent because one or more elements of the Accused System that is alleged to infringe the '319 Patent is located outside the United States.

33.   Yoox has not infringed and is not infringing, directly or indirectly, any valid and enforceable claim of the '319 patent because one or more of the components of the Accused System alleged to infringe the claims of the '319 Patent are not imported, manufactured, used, sold or offered for sale by Yoox.

34.   Yoox is entitled to a judicial declaration that Yoox does not infringe any valid claim of the '319 Patent.

SECOND CAUSE OF ACTION
Declaratory Judgment of Patent Invalidity

35.   Yoox repeats and realleges each of the allegations above.

36.   The claims of the '319 Patent are invalid under 35 U.S.C. § 101 because the claims of the '319 Patent recite the abstract idea of data processing of transactions that is ineligible for patent protection, and generic computer parts do not transform the claims into patent-eligible subject matter.

37.   The claims of the '319 Patent are invalid under 35 U.S.C. § 112 because the claims of the '319 Patent are indefinite, as there is no structure described in the specification that corresponds with the various functions recited in the numerous means-plus-function clauses. Further, any structure disclosed in the specification comprises mere general purpose computer parts, which do not satisfy 35 U.S.C. § 112.

38.   Yoox is entitled to a judicial declaration that the claims of the '319 Patent are invalid.