

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

LASERDYNAMICS USA, LLC,

Plaintiff,

-against-

ARVATO SYSTEMS NORTH AMERICA,
INC., ARVATO DIGITAL SERVICES, LLC,
and ARAVTO ENTERTAINMENT LLC,

Defendant.

Civil Action No.: 1:15-cv-3822-RWS

**FIRST AMENDED COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiff LaserDynamics USA, LLC (“LDUSA”), by and through its attorneys Kheyfits & Maloney LLP, as and for its complaint against Defendants Arvato Systems North America, Inc. (“ARVATO NA”), Arvato Digital Services, LLC (“ARVATO LLC”), and Arvato Entertainment LLC (“ARVATO Entertainment”)(collectively, ARVATO NA, ARVATO LLC and ARVATO Entertainment are collectively referred to herein as “ARVATO”), hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*, for infringement by Defendant ARVATO of one or more claims of U.S. Patent No’s. 6,426,927 (the “’927 patent”), 6,529,469 (the “’469 patent”), and 7,116,629 (the “’629 patent”) (collectively, the ’927 patent, the ’469 patent, and the ’629 patent are referred to herein as the “Patents-in-Suit”).

PARTIES

2. Plaintiff LDUSA is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of business at 75 Montebello

Road, Suffern, New York 10901. The sole member of LDUSA is Kamatani Technologies, Inc.

3. On information and belief, Defendant ARVATO NA is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 1745 Broadway, New York, New York 10019.

4. On information and belief, Defendant ARVATO LLC is a limited liability company organized and existing under the laws of the State of Delaware. On information and belief, ARVATO LLC is a wholly-owned subsidiary of ARVATO NA. On information and belief, ARVATO LLC maintains offices at 1745 Broadway, New York, New York 10019 and 108 Monticello Road, Weaverville, NC 28787-8931.

5. On information and belief, Defendant ARVATO Entertainment is a limited liability company organized and existing under the laws of the State of Delaware. On information and belief, ARVATO Entertainment is a wholly-owned subsidiary of ARVATO NA. On information and belief, ARVATO Entertainment maintains offices at 1745 Broadway, New York, New York 10019 and 108 Monticello Road, Weaverville, NC 28787-8931.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over ARVATO pursuant to N.Y. C.P.L.R. §§ 301 and 302(a)(1)-(3). On information and belief, this Court has general jurisdiction over ARVATO based on its continuous and systematic conduct within New York, including, *inter alia*, ARVATO's continuous contacts with, and sales to, customers in New York, and importation of products into New York. On information and belief, ARVATO is also subject to specific jurisdiction of this Court because, *inter alia*, ARVATO has committed acts of patent

infringement alleged in the Complaint and First Amended Complaint within the state of New York and elsewhere, causing injury within the state.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because, *inter alia*, Plaintiff LDUSA's principal place of business is located in this judicial district, the Patents-in-Suit are assigned to Plaintiff, and infringement of the Patents-in-Suit has occurred and is occurring in this judicial district.

BACKGROUND

9. The '927 patent is entitled "Data Recording And Reproducing Method For Multi-Layered Optical Disk System."

10. The '469 patent is entitled "Data Recording And Reproducing Technique For Multi-Layered Optical Disk System."

11. The '629 patent is entitled "Data Recording And Reproducing Method For Multi-Layered Optical Disk System."

12. The inventions of the Patents-in-Suit generally relate to optical disk recording and reproducing technologies.

13. Yasuo Kamatani invented the technology claimed in the Patents-in-Suit.

14. On information and belief, ARVATO manufactures, uses, sells, and/or offers for sale dual-layer optical discs for customers in the United States. On information and belief, certain of the dual-layer optical discs manufactured by ARVATO are manufactured in conformance with a format of dual-layer optical discs commonly known in the industry as "DVD-9" discs. On information and belief, ARVATO manufactures DVD-9 discs using a process known in the industry as replication. On information and belief, dual layer optical discs replicated by ARVATO in conformance with the DVD-9 format infringe at least claims 1 and 3

of the '927 patent, claims 1 and 10 of the '469 patent, and/or claims 1 and 6 of the '629 patent. In the alternative and on information and belief, ARVATO, or any of them, causes others replicate DVD-9 discs that infringe at least the aforementioned claims of the Patents-in-Suit.

15. On information and belief, in addition to the replication of DVD-9 and other dual-layer optical discs, ARVATO also offers to its customers a range of packaging, distribution, and/or other services relating to the replication of DVD-9 discs. On information and belief, the distribution services offered by ARVATO to its replication customers include but are not limited to the distribution of replicated DVD-9 discs directly to customers located in the United States, including in New York.

16. On information and belief, ARVATO offers the foregoing additional services, such as direct-to-consumer distribution, for the purpose of inducing customers to select ARVATO for their optical disc replication needs.

17. On information and belief, the sale to, offer for sale to, importation to, and/or use by replication customers or end-consumers of replicated DVD-9 discs amounts to infringement.

18. By correspondence, including letters dated October 28, 2014, December 9, 2014, March 25, 2015, May 4, 2015 and May 7, 2015, non-party General Patent Corporation ("GPC"), in its role as manager of LDUSA, notified ARVATO of the existence of the Patents-in-Suit and ARVATO's infringement thereof.

19. By letter dated June 17, 2015, ARVATO LLC wrote to GPC. In its letter ARVATO LLC referred to ARVATO Entertainment with contact information of 108 Monticello Road, Weaverville, NC 28787.

20. On information and belief, ARVATO LLC and ARVATO Entertainment each registered with the California Secretary of State the same address in New York of 1745 Broadway, New York, New York 10019. On information and belief, both ARVATO LLC and ARVATO Entertainment also operate out of the same offices located at 108 Monticello Road, Weaverville, NC 28787. On information and belief, both ARVATO NA and ARVATO LLC are registered to conduct business in New York.

21. On information and belief, ARVATO NA, ARVATO LLC, and ARVATO Entertainment share offices, officers and/or employees in New York and/or other locations and, therefore, ARVATO NA, ARVATO LLC and ARVATO Entertainment act as agents for each other for the purposes of receiving notices such as Plaintiff's letters dated October 28, 2014, December 9, 2014, March 25, 2015 and May 4, 2015.

22. Accordingly, and on information and belief, Defendants have received notice of the Patents-in-Suit, and of Defendants infringement thereof.

COUNT I: INFRINGEMENT OF THE PATENTS-IN-SUIT BY ARVATO NA

23. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

24. On July 30, 2002, the United States Patent and Trademark Office duly and lawfully issued the '927 patent, entitled "Data Recording And Reproducing Method For Multi-Layered Optical Disk System," based upon an application filed by the inventor, Yasuo Kamatani. A true and correct copy of the '927 patent is attached hereto as Exhibit A.

25. On March 4, 2003, the United States Patent and Trademark Office duly and lawfully issued the '469 patent, entitled "Data Recording And Reproducing Technique For Multi-Layered Optical Disk System," based upon an application filed by the inventor, Yasuo Kamatani. A true and correct copy of the '469 patent is attached hereto as Exhibit B.

26. On October 3, 2006, the United States Patent and Trademark Office duly and lawfully issued the '629 patent, entitled "Data Recording And Reproducing Method For Multi-Layered Optical Disk System," based upon an application filed by the inventor, Yasuo Kamatani. A true and correct copy of the '629 patent is attached hereto as Exhibit C.

27. LDUSA is the owner by assignment of the Patents-in-Suit, and has the right to sue and recover damages for infringement thereof.

28. ARVATO NA is not licensed under the Patents-in-Suit, yet ARVATO NA knowingly, actively, and lucratively practices the claimed inventions of the patents.

29. On information and belief, ARVATO NA has been and is now directly infringing at least claims 1 and 3 of the '927 patent, claims 1 and 10 of the '469 patent, and/or claims 1 and 6 of the '629 patent by making, using, importing, providing, supplying, distributing, selling and/or offering to sell infringing products. ARVATO NA's infringing products include, but are not limited to, at least dual-layer DVD-9 discs.

30. ARVATO NA is therefore liable for direct infringement of the Patents-in-Suit pursuant to 35 U.S.C § 271(a).

31. On information and belief, ARVATO NA also indirectly infringes under 35 U.S.C. § 271(b) by way of inducing others, including customers and/or consumers, to make, use, import, provide, supply, distribute, sell and offer to sell products that infringe at least the aforementioned claims of the Patents-in-Suit in the United States generally, and in the Southern District of New York in particular.

32. More specifically, and on information and belief, ARVATO NA has knowledge of the Patents-in-Suit at least by way of GPC's correspondence to ARVATO. On information and belief, after receiving notice of the Patents-in-Suit and its infringement thereof

ARVATO NA continues to induce its customers to engage ARVATO NA for replication of dual-layer optical discs that infringe at least the aforementioned claims of the Patents-in-Suit. On information and belief, ARVATO NA induces its customers for this purpose by *inter alia* marketing, selling, and/or offering for sale its replication services, including by providing to replication customers instructions, specifications and/or other materials relating to the replication of DVD-9 discs and ARVATO's replication services. On information and belief, ARVATO NA understands that the sale, offer for sale, and/or use by its customers of infringing dual-layer optical discs amounts to infringement.

33. Also, on information and belief, ARVATO NA, after receiving notice of the Patents-in-Suit and its infringement thereof ARVATO NA continues to offer to its customers additional services for the purpose of inducing prospective customers to retain ARVATO NA for replication of and/or distribution of infringing dual-layer optical discs and to practice the infringing methods. On information and belief, such other services include the packaging of infringing discs; the distribution of packaged infringing discs, including direct-to-consumer distribution; and/or other services. On information and belief, ARVATO NA offers such additional services for the purpose of inducing customers to use ARVATO NA for their replication needs. On information and belief, ARVATO NA understands that at least some customers, end-consumers or other parties use, sell, offer for sale, and/or import infringing discs replicated by ARVATO NA. On information and belief, ARVATO NA understands that such use, sale, offering for sale, and/or importation by customers, end-users and/or other parties amounts to infringement.

34. The acts of infringement by ARVATO NA have caused and will continue to cause damage to LDUSA. LDUSA is entitled to recover damages from ARVATO NA in an

amount no less than a reasonable royalty pursuant to 35 U.S.C. § 284. The full measure of damages sustained as a result of ARVATO NA's wrongful acts will be proven at trial.

35. ARVATO NA has infringed and continues to infringe despite an objectively high likelihood that its actions constitute infringement of LDUSA's valid patent rights. On information and belief, ARVATO NA knew of or should have known of this objectively high risk at least as early as when it became aware of the Patents-in-Suit by way of correspondence from GPC and/or its receipt of the Complaint. Thus, ARVATO NA's infringement of the Patents-in-Suit has been and continues to be willful.

36. LDUSA reserves the right to seek a willfulness finding on other or additional grounds and treble damages under 35 U.S.C. § 284 as well as its attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

37. Upon information and belief, the acts of infringement by ARVATO NA will continue unless enjoined by this Court.

38. LDUSA has been and will be irreparably harmed and damaged by the acts of infringement of the Patents-in-Suit by ARVATO NA and LDUSA has no adequate remedy at law.

COUNT II: INFRINGEMENT OF THE PATENTS-IN-SUIT BY ARVATO LLC

39. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

40. LDUSA is the owner by assignment of the Patents-in-Suit, and has the right to sue and recover damages for infringement thereof.

41. ARVATO LLC is not licensed under the Patents-in-Suit, yet ARVATO LLC knowingly, actively, and lucratively practices the claimed inventions of the patents.

42. On information and belief, ARVATO LLC has been and is now directly infringing at least claims 1 and 3 of the '927 patent, claims 1 and 10 of the '469 patent, and/or claims 1 and 6 of the '629 patent by making, using, importing, providing, supplying, distributing, selling and/or offering to sell infringing products. ARVATO LLC's infringing products include, but are not limited to, at least dual-layer DVD-9 discs.

43. ARVATO LLC is therefore liable for direct infringement of the Patents-in-Suit pursuant to 35 U.S.C § 271(a).

44. On information and belief, ARVATO LLC also indirectly infringes under 35 U.S.C. § 271(b) by way of inducing others, including customers and/or consumers, to make, use, import, provide, supply, distribute, sell and offer to sell products that infringe at least the aforementioned claims of the Patents-in-Suit in the United States generally, and in the Southern District of New York in particular.

45. More specifically, and on information and belief, ARVATO LLC has knowledge of the Patents-in-Suit at least by way of GPC's correspondence to ARVATO. On information and belief, after receiving notice of the Patents-in-Suit and its infringement thereof ARVATO LLC continues to induce its customers to engage ARVATO LLC for replication of dual-layer optical discs that infringe at least the aforementioned claims of the Patents-in-Suit. On information and belief, ARVATO LLC induces its customers for this purpose by *inter alia* marketing, selling, and/or offering for sale its replication services, including by providing to replication customers instructions, specifications and/or other materials relating to the replication of DVD-9 discs and ARVATO's replication services. On information and belief, ARVATO LLC understands that the sale, offer for sale, and/or use by its customers of infringing dual-layer optical discs amounts to infringement.

46. Also, on information and belief, ARVATO LLC, after receiving notice of the Patents-in-Suit and its infringement thereof ARVATO LLC continues to offer to its customers additional services for the purpose of inducing prospective customers to retain ARVATO LLC for replication of and/or distribution of infringing dual-layer optical discs and to practice the infringing methods. On information and belief, such other services include the packaging of infringing discs; the distribution of packaged infringing discs, including direct-to-consumer distribution; and/or other services. On information and belief, ARVATO LLC offers such additional services for the purpose of inducing customers to use ARVATO LLC for their replication needs. On information and belief, ARVATO LLC understands that at least some customers, end-consumers or other parties use, sell, offer for sale, and/or import infringing discs replicated by ARVATO LLC. On information and belief, ARVATO LLC understands that such use, sale, offering for sale, and/or importation by customers, end-users and/or other parties amounts to infringement.

47. The acts of infringement by ARVATO LLC have caused and will continue to cause damage to LDUSA. LDUSA is entitled to recover damages from ARVATO LLC in an amount no less than a reasonable royalty pursuant to 35 U.S.C. § 284. The full measure of damages sustained as a result of ARVATO LLC's wrongful acts will be proven at trial.

48. ARVATO LLC has infringed and continues to infringe despite an objectively high likelihood that its actions constitute infringement of LDUSA's valid patent rights. On information and belief, ARVATO LLC knew of or should have known of this objectively high risk at least as early as when it became aware of the Patents-in-Suit by way of correspondence from GPC and/or its receipt of the Complaint. Thus, ARVATO LLC's infringement of the Patents-in-Suit has been and continues to be willful.

49. LDUSA reserves the right to seek a willfulness finding on other or additional grounds and treble damages under 35 U.S.C. § 284 as well as its attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

50. Upon information and belief, the acts of infringement by ARVATO LLC will continue unless enjoined by this Court.

51. LDUSA has been and will be irreparably harmed and damaged by the acts of infringement of the Patents-in-Suit by ARVATO LLC and LDUSA has no adequate remedy at law.

**COUNT III: INFRINGEMENT OF THE PATENTS-IN-SUIT
BY ARVATO ENTERTAINMENT**

52. Plaintiff incorporates the preceding paragraphs as if fully set forth herein.

53. LDUSA is the owner by assignment of the Patents-in-Suit, and has the right to sue and recover damages for infringement thereof.

54. ARVATO Entertainment is not licensed under the Patents-in-Suit, yet ARVATO Entertainment knowingly, actively, and lucratively practices the claimed inventions of the patents.

55. On information and belief, ARVATO Entertainment has been and is now directly infringing at least claims 1 and 3 of the '927 patent, claims 1 and 10 of the '469 patent, and/or claims 1 and 6 of the '629 patent by making, using, importing, providing, supplying, distributing, selling and/or offering to sell infringing products. ARVATO Entertainment's infringing products include, but are not limited to, at least dual-layer DVD-9 discs.

56. ARVATO Entertainment is therefore liable for direct infringement of the Patents-in-Suit pursuant to 35 U.S.C § 271(a).

57. On information and belief, ARVATO Entertainment also indirectly infringes under 35 U.S.C. § 271(b) by way of inducing others, including customers and/or consumers, to make, use, import, provide, supply, distribute, sell and offer to sell products that infringe at least the aforementioned claims of the Patents-in-Suit in the United States generally, and in the Southern District of New York in particular.

58. More specifically, and on information and belief, ARVATO Entertainment has knowledge of the Patents-in-Suit at least by way of GPC's correspondence to ARVATO. On information and belief, after receiving notice of the Patents-in-Suit and its infringement thereof ARVATO Entertainment continues to induce its customers to engage ARVATO Entertainment for replication of dual-layer optical discs that infringe at least the aforementioned claims of the Patents-in-Suit. On information and belief, ARVATO Entertainment induces its customers for this purpose by *inter alia* marketing, selling, and/or offering for sale its replication services, including by providing to replication customers instructions, specifications and/or other materials relating to the replication of DVD-9 discs and ARVATO's replication services. On information and belief, ARVATO Entertainment understands that the sale, offer for sale, and/or use by its customers of infringing dual-layer optical discs amounts to infringement.

59. Also, on information and belief, ARVATO Entertainment, after receiving notice of the Patents-in-Suit and its infringement thereof ARVATO Entertainment continues to offer to its customers additional services for the purpose of inducing prospective customers to retain ARVATO Entertainment for replication of and/or distribution of infringing dual-layer optical discs and to practice the infringing methods. On information and belief, such other services include the packaging of infringing discs; the distribution of packaged infringing discs, including direct-to-consumer distribution; and/or other services. On information and belief,

ARVATO Entertainment offers such additional services for the purpose of inducing customers to use ARVATO Entertainment for their replication needs. On information and belief, ARVATO Entertainment understands that at least some customers, end-consumers or other parties use, sell, offer for sale, and/or import infringing discs replicated by ARVATO Entertainment. On information and belief, ARVATO Entertainment understands that such use, sale, offering for sale, and/or importation by customers, end-users and/or other parties amounts to infringement.

60. The acts of infringement by ARVATO Entertainment have caused and will continue to cause damage to LDUSA. LDUSA is entitled to recover damages from ARVATO Entertainment in an amount no less than a reasonable royalty pursuant to 35 U.S.C. § 284. The full measure of damages sustained as a result of ARVATO Entertainment's wrongful acts will be proven at trial.

61. ARVATO Entertainment has infringed and continues to infringe despite an objectively high likelihood that its actions constitute infringement of LDUSA's valid patent rights. On information and belief, ARVATO Entertainment knew of or should have known of this objectively high risk at least as early as when it became aware of the Patents-in-Suit by way of correspondence from GPC and/or its receipt of the Complaint. Thus, ARVATO Entertainment's infringement of the Patents-in-Suit has been and continues to be willful.

62. LDUSA reserves the right to seek a willfulness finding on other or additional grounds and treble damages under 35 U.S.C. § 284 as well as its attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

63. Upon information and belief, the acts of infringement by ARVATO Entertainment will continue unless enjoined by this Court.

64. LDUSA has been and will be irreparably harmed and damaged by the acts of infringement of the Patents-in-Suit by ARVATO Entertainment and LDUSA has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, LDUSA prays for the judgment in its favor against Defendants, individually and jointly and severally, granting LDUSA the following relief:

- A. Entry of judgment in favor of LDUSA against Defendants on all counts;
- B. Entry of judgment that Defendants have infringed the Patents-in-Suit;
- C. Entry of judgment that Defendants' infringement of the Patents-in-Suit has been willful;
- D. An order permanently enjoining Defendants, together with their officers, directors, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, from infringing the Patents-in-Suit;
- E. Award of compensatory damages adequate to compensate LDUSA for Defendants' infringement of the Patents-in-Suit, in no event less than a reasonable royalty trebled as provided by 35 U.S.C. § 284;
- F. LDUSA's costs;
- G. Pre-judgment and post-judgment interest on LDUSA's award; and

All such other and further relief as the Court deems just or equitable.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Fed. R. Civ. Proc., Plaintiff hereby demands trial by jury in this action of all claims so triable.

Dated: New York, New York
July 31, 2015

Respectfully submitted,

KHEYFITS & MALONEY LLP

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