

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

LASERDYNAMICS USA, LLC,

Plaintiff,

-against-

ADVANCED DUPLICATION SERVICES,
LLC,

Defendant.

Civil Action No.: 1:15-cv-03824-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 Defendant Advanced Duplication Services, LLC (“ADS”), 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 ADS 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 ADS is a limited liability company organized and existing under the laws of the State of Delaware, having its principal place of

business at 2155 Niagara Lane North, Plymouth, MN 55447-4654. On information and belief, ADS's primary business involves the manufacture of optical discs.

JURISDICTION AND VENUE

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

5. This Court has personal jurisdiction over ADS pursuant to N.Y. C.P.L.R. §§ 301 and 302(a)(1)-(3). On information and belief, this Court has general jurisdiction over ADS based on its continuous and systematic conduct within New York, including, *inter alia*, ADS's continuous contacts with, and sales to, customers in New York and importation of products into New York. On information and belief, ADS is also subject to specific jurisdiction of this Court because, *inter alia*, ADS 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. In addition, or in the alternative, this Court has jurisdiction over ADS pursuant to Fed. R. Civ. P. 4(k)(2).

6. 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 the Plaintiff, infringement of the Patents-in-Suit has occurred and is occurring in this judicial district, and Defendant ADS is a foreign entity.

BACKGROUND

The Patents-in-Suit

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

8. The `469 patent is entitled “Data Recording And Reproducing Technique For Multi-Layered Optical Disk System.”

9. The `629 patent is entitled “Data Recording And Reproducing Method For Multi-Layered Optical Disk System.”

10. The inventions of the Patents-in-Suit generally relate to multi-layer optical disks and disk recording and disk reproducing technologies relating to multi-layer optical disks.

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

The Infringing Products

12. On information and belief, ADS manufactures, uses, sells, and/or offers for sale opposite-track path, dual-layer optical discs for customers in the United States. On information and belief, certain of the opposite-track path, dual-layer optical discs manufactured by ADS are manufactured in conformance with a format commonly known in the industry as ‘DVD-9’ discs. On information and belief, ADS manufactures DVD-9 discs using a process known in the industry as replication. (Opposite-track path, dual-layer video DVDs replicated by ADS are referred to herein as “DVD-9 discs”).

13. On information and belief, ADS’s DVD-9 discs 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, ADS causes others to replicate on its behalf DVD-9 discs that infringe at least the aforementioned claims of the Patents-in-Suit.

The Highly Competitive Market For DVD-9 Discs

14. On information and belief, in addition to the replication of DVD-9 discs, ADS also offers to its customers a range of services ancillary to the replication of DVD-9 discs. On information and belief, these ancillary services include the printing of labels on discs,

printing and/or assembly of packaging designed to hold DVD-9 discs, and the distribution of packaged DVD-9 discs from ADS's replication facilities to customers, distributors, and/or end-users (the foregoing services are referred to generally as the "Ancillary Services").

15. On information and belief, the Ancillary Services offered by ADS to its replication customers also include the distribution of replicated DVD-9 discs directly to consumers located in the United States and in the Southern District of New York.

16. On information and belief, the market for replication of DVD-9 discs is highly competitive. ADS offers the foregoing Ancillary Services, such as direct-to-consumer distribution, for the purpose and intent of inducing customers to engage ADS over its competitors.

17. On information and belief, ADS induces customers to engage ADS to replicate infringing products by offering and marketing to customers its Ancillary Services in combination with disc replication. On information and belief, ADS does so by offering, marketing and/or providing to customers documents, forms, instructions or other materials regarding the submission of orders for replication and Ancillary Services and/or directing customers to web sites controlled by ADS that provide similar information concerning how customers may order from ADS optical discs that infringe the Patents-in-Suit.

**Defendant's Knowledge of The
Patents-in-Suit and Its Infringement Thereof**

18. On information and belief, for many years ADS has served the market for the replication of optical discs, including DVD-9 discs. On information and belief, as a result of its participation in the market for replication of DVD-9 and other optical discs, ADS has gained and now has substantial knowledge of optical discs, the market for such discs, distribution channels for such discs, and the end-use of such discs.

19. On information and belief, ADS's knowledge and understanding regarding optical discs includes *inter alia* technical features of DVD-9 discs as compared to other types of optical discs such as, for example, DVD-5 or DVD-10 discs. On information and belief, ADS has possessed such knowledge since well before the commencement of this action.

20. On information and belief, ADS's knowledge and understanding of the market for DVD-9 discs includes *inter alia* how its customers use, sell, resell and/or offer for resale DVD-9 discs to other parties.

21. By correspondence, including letters dated October 27, 2014 and November 24, 2014, non-party General Patent Corporation ("GPC"), in its role as manager of LDUSA, notified ADS of the existence of the Patents-in-Suit and ADS's infringement thereof. LDUSA's letters of October 27, 2014 and November 24, 2014 are incorporated herein.

22. On information and belief, ADS knew of the Patents-in-Suit no later than the date on which ADS received LDUSA's letters of October 27, 2014 and November 24, 2014. On information and belief, ADS may have known of the Patents-in-Suit at an earlier date.

23. By way of LDUSA's reference to "video DVDs" in the letters, enclosure of copies of the Patents-in-Suit referring to "multi-layer" discs, and ADS's substantial prior knowledge of the technical features of DVD-9 discs as compared to other optical disc formats, ADS knew or should have known that opposite-track path, dual-layer video DVDs such as DVD-9 discs infringed the Patents-in-Suit.

24. In the alternative, by way of ADS's notice of the Patents-in-Suit and ADS's substantial prior knowledge of the technical features of DVD-9 discs as compared to other optical disc formats, ADS was willfully blind as to the fact that DVD-9 discs infringed the Patents-in-Suit.

25. By no later than service of the Complaint (D.I. 1), in which LDUSA alleged that ADS's dual-layer, video DVDs infringed the Patents-in-Suit, ADS knew or was willfully blind as to the fact that ADS's DVD-9 discs infringed the Patents-in-Suit.

26. On August 18, 2015, a principal of ADS received information sufficient to call to ADS's attention the Patents-in-Suit and ADS's infringement thereof, including but not limited to a recitation as to how certain claims of the Patents-in-Suit relate to features that may be found on opposite-track path, dual-layer video DVDs replicated by ADS.

**Defendant Continues To Infringe the Patents-in-Suit
and to Induce Infringement of the Patents-in-Suit**

27. On information and belief, the use, sale, and/or offer for sale of replicated DVD-9 discs by replication customers, wholesalers, distributors, retailers, and/or end-users amounts to direct infringement under 35 U.S.C. § 271(a). By way of its substantial prior knowledge of the market for and features of DVD-9 discs, ADS knew or was willfully blind to the fact that the use, sale, and/or offer for sale of replicated DVD-9 discs by replication customers, wholesalers, distributors, retailers, and/or end-users amounts to direct infringement by those third-parties.

28. On information and belief, despite ADS's notice of the Patents-in-Suit and its infringement thereof, ADS continues to replicated DVD-9 discs knowing or willfully blind to the fact that the making, use, sale and/or offering for sale of such discs infringed the Patents-in-Suit.

29. On information and belief, following ADS's notice of the Patents-in-Suit and its infringement thereof, ADS continued offer to its replication customers Ancillary Services for the purpose of inducing such customers to engage ADS over its competitors for the replication of DVD-9 discs. ADS did so knowing or willfully blind to the fact that continuing to

induce replications customers to purchase, sell and/or resell replicated DVD-9 discs amounts to direct infringement by those third-parties.

COUNT I: INFRINGEMENT OF THE PATENTS-IN-SUIT BY ADS

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

31. 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.

32. 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.

33. 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.

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

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

36. On information and belief, ADS 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. ADS's infringing products include, but are not limited to, at least dual-layer DVD-9 discs.

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

38. On information and belief, ADS 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.

39. More specifically and on information and belief, ADS has knowledge of the Patents-in-Suit at least by way of GPC's correspondence to ADS and ADS's substantial prior knowledge of optical discs and the market for optical discs. On information and belief, after receiving notice of the Patents-in-Suit and its infringement thereof ADS continues to induce its customers to engage ADS over its competitors for the replication of dual-layer optical discs that infringe at least the aforementioned claims of the Patents-in-Suit. On information and belief, ADS 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 ADS's replication services. On information and belief, ADS understands that sale, offer for sale, and/or use by its customers of infringing dual-layer optical discs amounts to infringement.

40. Also on information and belief, after receiving notice of the Patents-in-Suit and its infringement thereof ADS continues to offers to its customers additional services for the purpose of inducing prospective customers to retain ADS for the replication 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, ADS offers such additional services for the purpose of inducing customers to use ADS for their replication needs. On information and belief, ADS understands that at least some customers, end-consumers, and/or other parties use, sell, offer for sale, and/or import infringing discs replicated by ADS. On information and belief, ADS understands that such use, sale, offering for sale, and/or importation by customers, end-users and/or other parties amounts to infringement.

41. The acts of infringement by ADS have caused and will continue to cause damage to LDUSA. LDUSA is entitled to recover damages from ADS 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 ADS's wrongful acts will be proven at trial.

42. ADS 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, ADS 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, ADS's infringement of the Patents-in-Suit has been and continues to be willful.

43. 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.

PRAYER FOR RELIEF

WHEREFORE, LDUSA prays for the judgment in its favor against ADS granting LDUSA the following relief:

- A. Entry of judgment in favor of LDUSA against ADS on all counts;
- B. Entry of judgment that ADS has infringed the Patents-in-Suit;
- C. Entry of judgment that ADS's infringement of the Patents-in-Suit has been willful;
- D. Award of compensatory damages adequate to compensate LDUSA for ADS's infringement of the Patents-in-Suit, in no event less than a reasonable royalty trebled as provided by 35 U.S.C. § 284;
- E. LDUSA's costs;
- F. Pre-judgment and post-judgment interest on LDUSA's award; and
- G. 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
September 4, 2015

Respectfully submitted,

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