

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ON-NET SURVEILLANCE SYSTEMS, INC.,)	
)	
Plaintiff,)	Case No. 1:15-CV-06653-JGK
)	
v.)	JURY TRIAL DEMANDED
)	
HAWK TECHNOLOGY SYSTEMS, LLC,)	
)	
Defendant.)	

AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff On-Net Surveillance Systems, Inc. (“OnSSI”) brings this action for declaratory judgment against Hawk Technology Systems, LLC (“Hawk”). OnSSI seeks, among other things, declaratory judgment of non-infringement of claim 12 of U.S. Patent No. RE43,462 (“the ‘462 patent”) (attached hereto as Exhibit 1), that claim 12 of the ‘462 patent is invalid, that OnSSI and its customers have intervening rights with respect to the ‘462 patent, that OnSSI and its customers have a license to and/or are covered by a covenant not to sue for infringement of the ‘462 patent, and that Hawk’s right to assert the ‘462 patent against OnSSI’s products or services has been exhausted. In support thereof, OnSSI alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment of non-infringement, invalidity, intervening rights, a license to the ‘462 patent, and exhaustion of Hawk’s right to assert the ‘462 patent against OnSSI’s products or services.

THE PARTIES

2. Plaintiff OnSSI is a New York corporation with its principal place of business located at One Blue Hill Plaza, Seventh Floor, Pearl River, New York 10965. OnSSI is an

industry leader in the business of developing, designing and selling open platform IP video management and surveillance software. OnSSI was founded in 2002 with the goal of developing comprehensive and intelligent IP video surveillance management software. OnSSI's award-winning IP-based surveillance software, marketed under the trade name Ocularis, supports a range of surveillance applications in the fields of education, gaming, government, healthcare, manufacturing, public safety, transportation, and utilities throughout the United States and the World.

3. Upon information and belief, Defendant Hawk is a Florida limited liability company with its principal place of business at 2 South Biscayne Blvd., Suite 3800, Miami, Florida 33131, which is the same address as the law offices of Lipscomb, Eisenberg & Baker, counsel for Hawk.

4. Upon information and belief, Hawk's principal place of business has at all times been the address of its counsel at that time.

5. Upon information and belief, Hawk was formed in 2012 and its business is directed to owning and enforcing patents in litigation.

6. Upon information and belief, Hawk's current business is directed to owning and enforcing the '462 patent in litigation.

7. Upon information and belief, Hawk's primary source of revenue is through the enforcement of its patents.

8. Upon information and belief, Hawk has not in the past and does not presently own any real property.

9. Upon information and belief, Hawk has not in the past and does not presently itself manufacture any products or offer for sale any products or services embodying the teachings of the '462 patent.

JURISDICTION AND VENUE

10. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* and under the Patent Laws of the United States, as enacted under Title 35 of the United States Code. This Court has jurisdiction over this action pursuant to 35 U.S.C. §§ 271 *et seq.* and 28 U.S.C. §§ 1331, 1338, 2201-2202.

11. Upon information and belief, Hawk has and intends to continue to file actions against OnSSI's customers for infringement of at least claim 12 of the '462 patent.

12. On November 19, 2015, Hawk submitted, as an attachment to its Motion to Dismiss [Dkt 19], a covenant not to sue (hereafter "OnSSI Covenant Not To Sue") that states: "Hawk Technology Systems, LLC expressly reserves its right to sue On-Net Surveillance Systems, Inc.'s customers for infringing method claim 12 of the '462 Patent." *See* Exhibit 7.

13. OnSSI has an existing obligation to indemnify certain of its customers in connection with claims of infringement relating to OnSSI's products.

14. Certain of OnSSI's customers have demanded from OnSSI indemnification and assistance in defense in connection with lawsuits brought by Hawk for infringement of the '462 patent based on the use of OnSSI's Ocularis product. *See, e.g.*, Exhibit 8.

15. OnSSI has indemnified certain of its customers in connection with claims of infringement of the '462 patent brought by Hawk in connection with use of OnSSI's Ocularis product. *See, e.g.*, Exhibit 9 (redacted copy of November 13, 2015 agreement).

16. This Court has general and specific personal jurisdiction over Hawk pursuant to N.Y. C.P.L.R. §§ 301 and 302(a).

17. This Court has general personal jurisdiction over Hawk at least based on Hawk's continuous and systematic conduct and substantial business in this forum, including Hawk's continuing enforcement activities with respect to the '462 patent in this forum.

18. This Court has specific personal jurisdiction over Hawk at least because Hawk has transacted business in and directed at New York pertaining to the '462 patent.

19. Upon information and belief, Hawk has never commercialized or otherwise exploited the '462 patent other than through enforcement and/or licensing of the '462 patent.

20. Upon information and belief, Hawk's business is directed to owning and enforcing the '462 patent in litigation. Hawk has at least transacted business in New York by filing suit in this forum state in an attempt to enforce the '462 patent as part of its business.

21. Hawk has additionally at least transacted business in New York by entering into one or more agreements governed by New York law with New York entities in connection with Hawk's business of enforcing the '462 patent in New York.

22. Hawk filed suit on June 1, 2015 against Strand Book Store, Inc., in the United States District Court for the Southern District of New York alleging that Strand Book Store, Inc. infringes certain claims of the '462 patent by its use of Plaintiff OnSSI's Ocularis product.

23. Hawk has filed numerous lawsuits in federal courts located in New York, including the following cases:

- *Hawk Technology Systems LLC v. Alrose King David, LLC*, Case No. 11-cv-6238, filed on November 21, 2014 in the Eastern District of New York;
- *Hawk Technology Systems LLC v. Price Chopper Operative Co., Inc. et al*, Case No. 15-cv-210, filed on February 24, 2015 in the Northern District of New York;
- *Hawk Technology Systems, LLC v. Strand Book Store, Inc.*, Case No. 15-cv-4207, filed on June 1, 2015 in the Southern District of New York;
- *Hawk Technology Systems LLC v. Vassar College*, Case NO. 15-cv-4847, filed on June 22, 2015 in the Southern District of New York;

- *Hawk Technology Systems, LLC v. Accor North America Co., et al.*, Case No. 15-cv-05692, filed on July 21, 2015 in the Southern District of New York;
- *Hawk Technology Systems, LLC v. New York City Health and Hospitals Co.*, Case No. 15-cv-6005, filed on July 30, 2015 in the Southern District of New York;
- *Hawk Technology Systems LLC v. Sarnow Food Group, Inc.*, Case No. 15-cv-4696, filed on August 11, 2015 in the Eastern District of New York; and
- *Hawk Technology Systems, LLC v. Fordham University*, Case No. 15-cv-8815, filed on November 9, 2015 in the Southern District of New York.

24. Upon information and belief, Hawk has entered into at least one settlement agreement governed by New York law, thereby releasing at least one of OnSSI's customers from any liability for infringement of the '462 patent in exchange for payment.

25. The present lawsuit arises out of and is directly and substantially related to Hawk's enforcement of the '462 patent in New York.

26. Venue is proper in this Court under 28 U.S.C. §§ 1391(b) and 1391(c) at least because Hawk resides in this judicial district within the meaning of the venue statute. Hawk is subject to personal jurisdiction in this judicial district and has conducted business in this judicial district. Additionally, Hawk has accused OnSSI's customers of infringement in this judicial district through the use of OnSSI's products which are being used in this judicial district.

THE PATENT AT ISSUE

27. The '462 patent is a reissue of U.S. Patent No. 5,625,410 ("the '410 Patent"), which issued on April 29, 1997.

28. On June 12, 2012, the '410 patent was reissued as the '462 patent. The '462 patent is entitled "Video Monitoring and Conferencing System." The '462 patent identifies the alleged inventors as Kinya Washino and Barry Schwab.

29. The '462 patent expired on April 29, 2014.

30. During the prosecution of reissue application serial no. 09/301,656 (“the ‘656 application”), which led to the issuance of the ‘462 patent, the patentee declared “our issued patent is at least partly inoperative or invalid in that we claim less than we had the right to claim.”

31. During the prosecution of the ‘656 application, the patentee amended the language and scope of the original claims of the ‘410 patent and also added new claims.

32. During the prosecution of the ‘656 application at the United States Patent and Trademark Office (“USPTO”), the Examiner rejected claim 12 under 35 U.S.C. § 101 as not being “tied to another statutory category (such as a particular apparatus)” and not “transform[ing] the underlying subject matter.”

33. Following the rejection pursuant to 35 U.S.C. § 101, claim 12 was amended to include, *inter alia*, a “personal computer based system,” an “analog-to-digital converter,” a “personal computer based [display device],” and a “storage device.”

34. In filing such amendment, the patentee stated that claim 12 had been “amended to recite particular ‘machines or apparatus’ as required to constitute patentable subject matter under §101, as set forth in *In re Bilski*.” (*In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008)).

35. This amendment resulted in the 35 U.S.C. § 101 rejection being withdrawn and claim 12 being allowed.

36. The ‘462 patent, including amended claim 12, was examined at the USPTO prior to the Supreme Court’s decision in *Alice Corp. v. CLS Bank Int’l*, 134 S. Ct. 2347 (2014).

THE SUBSTANTIAL CONTROVERSY BETWEEN THE PARTIES

37. Hawk claims to be the owner by assignment of the ‘462 patent.

38. Upon information and belief, Hawk is a non-practicing entity and does not receive any profit from its alleged ownership of the '462 patent without obtaining licensing, settlement, or similar fees from other entities.

39. To date, Hawk has filed over 120 lawsuits for infringement of the '462 patent, and such suits have been filed in judicial districts throughout the United States, including the Southern District of New York. On information and belief, Hawk has followed each filing with a demand for a quick settlement at a price far lower than the cost to defend the litigation.

40. Since 2013, Hawk has sued users of OnSSI's products, including Hardee County Schools (FL), CoxHealth, CRG Citadel shops, City and County of San Francisco, Strand Book Store, Inc., Players Poker Club, Inc., Alrose King David, LLC, Caterpillar, United Supermarkets LLC, Fanuc Robotics Corp., and the University of Miami, alleging that each of these entities infringe the '462 patent because they utilize OnSSI's product.

41. During the course of Hawk's litigation against University of Miami, Hawk provided the University of Miami with a claim chart that described element-by-element Hawk's allegations of infringement of three independent claims of the '462 patent, including claim 12, by OnSSI's Ocularis product. A true and correct copy of the claim chart is attached hereto as Exhibit 2.

42. In the chart, Hawk alleges that the claim elements are "[p]racticed" based on the use of OnSSI's Ocularis product, and thus alleges that users of the Ocularis product infringe the identified element of the claim. Furthermore, Hawk used information from the User's Manual for the Ocularis product to develop its infringement contentions and cited to OnSSI's website in support thereof.

43. No other company's products are mentioned by name or referenced in the chart. No other company's brochures, information or websites are referenced in the chart. The alleged infringement is established exclusively by referencing OnSSI and its Ocularis product.

44. In other suits, Hawk has appended documents to its complaint of patent infringement showing that the respective defendant utilizes Ocularis for monitoring video and alerts from multiple cameras at multiple locations in support of its infringement allegations. *See e.g.*, Exhibit 3 (which is Exhibit A from the Complaint in *Hawk Technology Systems, LLC v. City of San Francisco* (case no. 15-cv-3187) (N.D.Ca.)), Exhibit 4 (which is Exhibit A from the Complaint in *Hawk Technology Systems, LLC v. Strand Book Store* (case 15-cv-4207) (S.D.N.Y.)), and Exhibit 5 (which is Exhibit B from the Complaint in *Hawk Technology Systems, LLC v. CoxHealth* (case no. 15-cv-3315) (W.D.Mo)).

45. Hawk's repeated identification of the Ocularis product and the related User's Manual indicates that Hawk considers the Ocularis product and/or use thereof to be an infringement of the '462 patent and that Hawk potentially considers OnSSI to be, at a minimum, inducing and/or contributing to the infringement of the '462 patent through its sale of the Ocularis product.

46. On November 19, 2015, Hawk submitted, as an attachment to its Motion to Dismiss [Dkt 19], the OnSSI Covenant Not To Sue. *See* Exhibit 7. The OnSSI Covenant Not To Sue states that Hawk covenants not to sue OnSSI for infringement with regard to the '462 patent and all claims thereunder and "intentionally abandons its past, present, and future right to prosecute all past, present, and future infringement claims against On-Net Surveillance Systems, Inc. with regard to the '462 Patent." *See* Exhibit 7.

47. The OnSSI Covenant Not To Sue contains a further covenant “not to sue any of On-Net Surveillance Systems, Inc.’s customers for infringement with regard to the ‘462 Patent, with the express exception for claims involving infringement of the method claim 12 of the ‘462 Patent.” Exhibit 7.

48. OnSSI has an existing obligation to indemnify certain of its customers in connection with claims of infringement relating to OnSSI’s products.

49. Certain of OnSSI’s customers have demanded from OnSSI indemnification and assistance in defense in connection with lawsuits brought by Hawk for infringement of the ‘462 patent based on the use of OnSSI’s Ocularis product. *See, e.g.*, Exhibit 8.

50. OnSSI has indemnified certain of its customers in connection with claims of infringement of the ‘462 patent brought by Hawk in connection with use of OnSSI’s Ocularis product. *See, e.g.*, Exhibit 9.

51. Hawk has aggressively and persistently enforced its rights in the ‘462 patent against alleged infringers, including OnSSI’s customers. On information and belief, Hawk will continue to identify OnSSI’s customers and file suit against them for infringement of the ‘462 patent, including customers that reside in this judicial district.

52. OnSSI has an objectively reasonable apprehension that Hawk will bring a patent infringement action against its customers, including customers who OnSSI has an obligation to indemnify, creating an objectively reasonable apprehension that OnSSI will have additional indemnification obligations.

53. Based on the foregoing, there is a substantial and justiciable controversy between OnSSI and Hawk that warrants declaratory judgment.

**COUNT I: DECLARATORY JUDGMENT OF
NON-INFRINGEMENT OF THE '462 PATENT**

54. OnSSI hereby restates and realleges the allegations set forth in paragraphs 1-53 above, and incorporates them by reference.

55. Hawk claims to be the owner of all legal right, title and interest in the '462 patent, including the right to enforce the '462 patent.

56. OnSSI has an objectively reasonable apprehension that Hawk will bring a patent infringement action against its customers, including customers who OnSSI has an obligation to indemnify, creating an objectively reasonable apprehension that OnSSI will have additional indemnification obligations.

57. Hawk has alleged that use of OnSSI's Ocularis product infringes the '462 patent. Hawk has provided an infringement claim chart to at least one of OnSSI's customers that it has sued for patent infringement. The claim chart alleges that use of the Ocularis product infringes the '462 patent. Exhibit 2. Such allegations are reinforced by Hawk's repeated references to OnSSI's User's Manual and website in its infringement claim charts, as well as by appending public documents indicating that the Ocularis product is used by various defendants that Hawk has sued for patent infringement.

58. Based on the foregoing, on information and belief, Hawk contends that OnSSI's customers, including customers who OnSSI has an obligation to indemnify, are liable for infringing at least claim 12 of the '462 patent by using OnSSI's Ocularis product.

59. The products provided by OnSSI to its customers and utilized by its customers, including Ocularis and the use thereof, do not infringe, either directly or indirectly, any valid claim of the '462 patent.

60. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

61. An actual and justiciable controversy exists between OnSSI and Hawk as to whether claim 12 of the '462 patent is infringed by OnSSI's customers. A judicial declaration is necessary and appropriate so that OnSSI may ascertain its rights regarding claim 12 of the '462 patent.

62. OnSSI requests a judicial determination and declaration that OnSSI's products and the use thereof, including the Ocularis product, do not infringe, either literally or under the doctrine of equivalents, directly or indirectly, or otherwise, claim 12 of the '462 patent.

**COUNT II: DECLARATORY JUDGMENT
OF INVALIDITY**

63. OnSSI hereby restates and realleges the allegations set forth in paragraphs 1-62 above, and incorporates them by reference.

64. Claim 12 of the '462 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with the requirements of 35 U.S.C. § 1, *et seq.*, including but not limited to §§ 101, 102, 103, and 112.

65. As an example, claim 12 of the '462 patent is at least invalid under 35 U.S.C. § 101 as claiming unpatentable subject matter. Claim 12 is at least invalid under the standard described in *Alice Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014) because claim 12 is directed toward a patent-ineligible abstract idea and has no additional limitations that transform the nature of the claim into a patent-eligible application. As reissued, claim 12 recites:

12. The method of simultaneously displaying and storing multiple video images, comprising the steps of:

receiving video images at a personal computer based system from one or more sources;

digitizing any of the images not already in digital form using an analog-to-digital converter;

displaying at least certain of the digitized images in separate windows on a personal computer based display device, using a first set of temporal and spatial parameters associated with each image in each window;

converting one or more of the video source images into a data storage format using a second set of temporal and spatial parameters associated with each image; and

simultaneously storing the converted images in a storage device.

See Exhibit 1.

66. Claim 12 is directed toward an abstract idea. The additional elements of claim 12 are all well-known, routine processes and were well-known and routine at the time of filing of the application that became the '462 patent. These additional elements contribute no "inventive concept" and do not elevate claim 12 to patent eligibility.

67. As another example, claim 12 of the '462 patent is at least invalid under 35 U.S.C. § 102 as being anticipated by any of: (1) U.S. Patent No. 5,375,068 to Palmer, *et al.*, filed June 3, 1992 ("Palmer"), (2) U.S. Patent No. 5,237,408 to Blum, *et al.*, filed August 2, 1991 ("Blum") and/or (3) Alistar McLeod, "Automated video surveillance— teaching an old dog new tricks," SPIE Proceedings, Vol. 1989, p. 228-239, December 17, 1993 ("McLeod").

68. Further, claim 12 of the '462 patent is at least invalid under 35 U.S.C. § 103 as being obvious in view of Palmer, Blum and McLeod, alone or in combination with each other or one or more of the following references: (1) Jonathan N. Bradley, *et al.*, "Video Imaging for Nuclear Safeguards," IEEE Industrial Data Compression Workshop and Conference, Snow Bird, Utah, March 31 –April 1, 1994, (2) Peter Chare, *et al.*, "Unattended Digital Video Surveillance:

A System Prototype for Euratom Safeguards,” 35th Annual Meeting of the Institute of Nuclear Materials Management, Naples, Florida, July 17-20, 1994, (3) Herman Kruegle, “CCTV Surveillance, Video Practices and Technology,” Butterworth-Heinemann, December 23, 1994, (4) U.S. Patent No. 5,689,641 to Ludwig, *et al.*, filed October 1, 1993, (5) U.S. Patent No. 6,335,722 to Tani *et al.*, filed October 24, 1994 and/or (6) U.S. Patent No. 5,617,135 to Noda *et al.*, filed September 2, 1994.

69. As yet another example, claim 12 of the ‘462 patent is at least invalid under 35 U.S.C. § 112, first paragraph, as failing to be supported by an adequate written description of the claim terms “temporal and spatial parameters,” for which there is no disclosure in the specification. Accordingly, the inventors of the ‘462 patent were not in possession of the invention of claim 12 of the ‘462 patent as of the filing date of the application resulting in the ‘462 patent. In addition, the invention of claim 12 lacks enablement pursuant to 35 U.S.C. § 112, first paragraph, due to lack of disclosure and written description of at least the claim terms “temporal and spatial parameters.” Claim 12 is therefore also indefinite.

70. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

71. An actual and justiciable controversy exists between OnSSI and Hawk as to whether claim 12 of the ‘462 patent is invalid. A judicial declaration is necessary and appropriate so that OnSSI may ascertain its rights regarding the ‘462 patent.

COUNT III: DECLARATORY JUDGMENT OF INTERVENING RIGHTS

72. OnSSI hereby restates and realleges the allegations set forth in paragraphs 1-71 above, and incorporates them by reference.

73. As of June 12, 2012, when the '462 patent reissued, OnSSI was selling the Ocularis product.

74. Each of the original claims of the '410 patent were amended during reissue, including claim 12.

75. On June 3, 2014 Hawk filed a malpractice claim against the prosecuting attorneys of the '462 patent, attached hereto as Exhibit 6. In its Complaint, Hawk admitted that "the text of the '410 patent's independent claims [were altered] in such a manner that they are no longer substantially identical to the original claims." Exhibit 6 at 3. Hawk further admitted that the claims of the '462 patent are "broad[er] [than] the claims of the '410 patent." *Id.* Accordingly, each of the amended and new claims of the '462 patent, including claim 12, are not substantially identical to the claims of the patent as originally issued.

76. OnSSI and its customers are entitled to absolute and equitable intervening rights pursuant to 35 U.S.C. § 252.

77. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

78. An actual and justiciable controversy exists between OnSSI and Hawk as to whether OnSSI or its customers who OnSSI is obligated to indemnify have absolute and/or equitable intervening rights. A judicial declaration is necessary and appropriate so that OnSSI may ascertain its rights regarding the '462 patent.

**COUNT IV: DECLARATORY JUDGMENT
OF A LICENSE**

79. OnSSI hereby restates and realleges the allegations set forth in paragraphs 1-78 above, and incorporates them by reference.

80. OnSSI has an objectively reasonable apprehension that Hawk will bring a patent infringement action against its customers, including customers who OnSSI has an obligation to indemnify.

81. On June 2, 2014, Milestone Systems, Inc. (“Milestone”) filed suit against Hawk requesting declaratory judgment of non-infringement and invalidity of the ‘462 patent and that Milestone had intervening rights with respect to the ‘462 patent in the United States District Court for the Southern District of Florida, case no. 14-cv-22030. On information and belief, in settlement thereof no later than October 2014, Hawk covenanted that it would not sue Milestone and its Affiliates, agents, suppliers, contract manufacturers, customers, integrators, value added resellers, OEM partners, importers, distributors, software licensees or product end-users for infringement of the ‘462 patent (hereafter “the Milestone License and Covenant Not To Sue”).

82. From at least August 1, 2009 (*i.e.*, prior to six years ago, the earliest date Hawk may claim damages pursuant to 35 U.S.C. § 286) through April 29, 2014 (the expiration of the ‘462 patent), OnSSI was Milestone’s OEM partner, purchasing software that OnSSI resells as part of the Ocularis product. Accordingly, on information and belief, the Milestone License and Covenant Not To Sue covers OnSSI and its customers’ manufacture, use, sale, offer for sale and importation of the Ocularis product.

83. On information and belief, Hawk was informed that OnSSI was an OEM partner of Milestone and that OnSSI was covered by the Milestone License and Covenant Not To Sue and yet thereafter, Hawk sued OnSSI’s customers for infringement of the ‘462 patent, including Strand Book Store, the City and County of San Francisco and CoxHealth.

84. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

85. A judicial declaration that OnSSI and its customers are protected by license and/or covenant not to sue is necessary and appropriate so that OnSSI may ascertain its rights regarding the '462 patent.

**COUNT V: DECLARATORY JUDGMENT
OF EXHAUSTION OF THE '462 PATENT**

86. OnSSI hereby restates and realleges the allegations set forth in paragraphs 1-85 above, and incorporates them by reference.

87. OnSSI has an objectively reasonable apprehension that Hawk will bring a patent infringement action against OnSSI's customers, including customers who OnSSI has an obligation to indemnify.

88. Hawk's patent rights in the '462 patent have been exhausted with respect to products sold to OnSSI by Milestone at least by virtue of the Milestone License and Covenant Not To Sue.

89. Additionally, the OnSSI Covenant Not To Sue states that "Hawk Technology Systems, LLC hereby covenants not to sue On-Net Surveillance Systems, Inc. for infringement with regard to the '462 Patent and all claims thereunder. By so covenanting, Hawk Technology Systems, LLC intentionally abandons its past, present, and future right to prosecute all past, present, and future infringement claims against On-Net Surveillance Systems, Inc. with regard to the '462 Patent." Exhibit 7.

90. Hawk's right to assert the '462 patent against OnSSI's products or services or the use thereof by any downstream customers is exhausted under the doctrine of patent exhaustion at least by reason of the OnSSI Covenant Not To Sue.

91. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

92. An actual and justiciable controversy exists between OnSSI and Hawk as to whether Hawk's right to assert the '462 patent, against OnSSI's products or services is exhausted under the doctrine of patent exhaustion. A judicial declaration is necessary and appropriate so that OnSSI may ascertain its rights regarding the '462 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff OnSSI respectfully requests the following relief:

- a) A declaration that OnSSI's products and the use thereof, including the Ocularis product, does not infringe claim 12 of the '462 patent either literally or under the doctrine of equivalents, directly or indirectly, or otherwise;
- b) A declaration that claim 12 of the '462 patent is invalid;
- c) A declaration that OnSSI and its customers have intervening rights pursuant to 35 U.S.C. § 252 with respect to the '462 patent;
- d) A declaration that OnSSI and its customers have a license to practice the invention claimed in the '462 patent and/or have the benefit of a covenant not to be sued for infringement of the '462 patent;
- e) A declaration that Hawk's rights in relevant products sold by Milestone or OnSSI have been exhausted;

f) An order enjoining Hawk, its officers, directors, agents, counsel, servants and employees, and successors in interest and assigns, all persons in active concert or participation with any of them, from charging infringement or instituting an action based on infringement of the '462 patent against OnSSI's customers or any downstream users of OnSSI's products;

g) An order declaring that OnSSI is the prevailing party and that this is an exceptional case under 35 U.S.C. § 285 and awarding OnSSI its costs and attorneys' fees in connection with this action; and

h) Such other and further relief as the Court deems just, reasonable and proper.

JURY TRIAL DEMANDED

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff OnSSI hereby demands a trial by jury on all issues so triable.

Dated: December 4, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2015, I caused a true and correct copy of the foregoing **AMENDED COMPLAINT FOR DECLARATORY JUDGMENT** to be filed and served electronically by means of the Court's CM/ECF system in accordance with Federal Rules of Civil Procedure and/or the Local Rules of this Court, upon the following counsel of record for Defendant Hawk Technology Systems, LLC:

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