UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

ACADEMY, LTD. Plaintiff, V. SHIPPING AND TRANSIT, LLC (*fka* ARRIVALSTAR S.A.) Defendant.	Civil Action No. _____ JURY TRY DEMANDED

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Academy, Ltd. d/b/a Academy Sports + Outdoors ("Academy") hereby files this Complaint for Declaratory Judgment against Defendant Shipping and Transit, LLC, formerly known as ArrivalStar S.A. (collectively "S&T").

1. Academy seeks a declaratory judgment that four patents owned by S&T are invalid. The patents at issue are U.S. Patent No. 6,415,207 ("the '207 Patent"), U.S. Patent No. 6,904,359 ("the '359 Patent"), U.S. Patent No. 6,763,299 ("the '299 Patent") and U.S. Patent No. 7,400,970 ("the '970 Patent"), (collectively, "the Asserted Patents" or "the Patents-in-Suit").

2. Academy also seeks a declaratory judgment that its accused online ordering platform (www.academy.com) or certain accused functions of that platform do not infringe the Patents-in-Suit and Academy does not contribute to or induce infringement of the Patents-in-Suit by others.

3. Academy seeks this relief because S&T, the purported owner of the Patents-in-Suit, has sent Academy a demand letter dated January 11, 2016 ("Demand

Letter"), in which S&T threatens to file suit if Academy does not pay a substantial fee. A copy of the Demand Letter is attached as Exhibit A.

4. The threat of suit by S&T is real and not idle because S&T (either under its current name or its former name, ArrivalStar) has filed patent infringement actions in over 450 cases in various jurisdictions asserting one or more of the Patents-in-Suit or other patents it owns directed to the same general subject matter.

5. Given the Demand Letter, and given the litigious nature of S&T and its predecessor ArrivalStar, S&T's allegations have placed a cloud over Academy and its online ordering platform, and have created a concrete and immediate justiciable controversy between Academy and S&T. Academy cannot simply stand by to await some filing of litigation at some undefined date in the future.

JURISDICTION AND VENUE

6. This is an action for declaratory judgment of non-infringement and invalidity under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* and under the Patent Laws of the United States, 35 U.S.C. § 271 *et seq.* and 28 U.S.C. § 1338(a).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391 and/or 1400 because, among other reasons, S&T is subject to personal jurisdiction in this judicial district, S&T conducts or has regularly conducted business in this judicial district, and/or because a substantial part of the events or omissions giving rise to this action occurred in this judicial district.

8. S&T is in the business of licensing and enforcing its patent portfolio. Accordingly, S&T is subject to personal jurisdiction in this judicial district at least due to regularly doing business with companies based in this district relating to the licensing and

enforcement of its patents, including, *inter alia*, Continental Airlines, FlightAware, LLC, and Aries Freight Systems, LP. Further, S&T has filed cases in Texas (*e.g.*, *ArrivalStar v. Cheetah Software Systems, Inc, Orbitz LLC and Galileo International, Inc.* (Cause No. 504cv127 EDTX) and *ArrivalStar v. Dallas-Fort Worth International Airport* (Cause No. 3:07cv464 NDTX). Those cases concern the patents at issue in this case and/or similar patents directed to similar subject matter. Furthermore, the events giving rise to this action—namely, the demand to take a license to the S&T patents and the threat of enforcement—occurred primarily and substantially in this judicial district, where Academy is headquartered.

FACTUAL BACKGROUND

9. S&T is in the business of licensing and enforcing patents. S&T purports to have licensed its patents to, or entered into settlement agreements with, several hundred companies. S&T has filed over 450 lawsuits to force licenses to its patents.

10. On January 11, 2016, a law firm claiming to represent Martin Kelly Jones and the owner of the patents S&T, Newport Trial Group, sent the Demand Letter alleging that certain functions available through the www.academy.com online ordering platform (namely, the "Advance Ship Notice" and "Shipping Confirmation Email" functions) infringe certain claims of four S&T patents. In the Demand Letter, S&T demands that Academy take a license and adds that Mr. Jones protects his rights by "filing patent infringement lawsuits in the federal courts when necessary." Exhibit A at 3. S&T then gave Academy 30 days to respond.

11. As a result of the foregoing, an actual, immediate and justiciable controversy exists regarding whether Academy infringes the Patents-in-Suit and whether the Patents-in-Suit are invalid.

THE PARTIES

12. Academy is organized and existing under the laws of the state of Texas having its principal place of business at 1800 N. Mason Rd., Katy, TX 77449.

13. S&T is a Florida company with its principal place of business located at 711 SW 24th, Boynton Beach, Florida 33435.

THE PATENTS-IN-SUIT

A. The '207 Patent

14. The '207 Patent is entitled "System and Method for Automatically Providing Vehicle Status Information." It issued on July 2, 2002. A copy of the '207 Patent is attached as Exhibit B.

15. In the Demand Letter (Exhibit A), S&T has accused Academy of infringing claims 5 and 7 of the '207 Patent. Claim 5 is directed to "[a] system for monitoring and reporting status of vehicles, comprising: means for maintaining status information associated with a vehicle, said status information indicative of a current proximity of said identified vehicle; means for communicating with a remote communication device, said means for communicating including a means for receiving caller identification information automatically transmitted to said communicating means; means for utilizing said caller identification information to automatically search for and locate a set of said status information; and means for automatically retrieving and

transmitting said set of said status information." Claim 7 depends from Claim 5 and requires "wherein said caller identification information is an e-mail address."

16. Academy does not infringe Claims 5 and 7 for at least the following reasons. Claim 5 is directed to a system "for monitoring and reporting status of vehicles." To do so, Claim 5 requires, *inter alia*, "means for maintaining status information associated with a vehicle, said status information indicative of a current proximity of said identified vehicle." The '207 Patent specification teaches that the claimed systems track in real time the progress of the delivery vehicle and then report that information to the customer expecting the package. The accused Academy online ordering platform (at www.academy.com), however, does not monitor the progress of the delivery vehicle in real time and then update the customer on the progress of the vehicle. Nor does the system maintain status information on the vehicle, let alone identify it. Rather, to the extent that the Academy system notifies the customer, Academy merely notifies the customer that the order has been received, confirms the shipment timing selected by the customer (i.e., 3-5 business days), and later notifies the customer when a tracking number has been assigned. Academy does not update the current location of the package as it travels in the delivery vehicle.

17. Claims 5 and 7 of the '207 Patent, as well as other claims, are invalid for failure to comply with one or more of the sections of the Patent Code governing validity, namely, 35 U.S.C. §§ 101, 102, 103, and 112. Without limiting further arguments to be developed during the litigation, the claims of the '207 Patent are anticipated or rendered obvious by certain prior art references, alone or in combination, that were not considered by the USPTO in issuing the patent. Such prior art includes, *inter alia*, Labell, et al.,

"Advanced Public Transportation Systems: The State of the Art Update '92" (April 1992) (notably, during reexamination several claims of a related patent – U.S. Patent No. 7,030,781 – were found invalid in view of the Labell reference); U.S. Patent No. 4,804,937, "Vehicle monitoring arrangement and system" (1989); and Williams, "Radiodetermination Satellite Service: Applications in Railroad Management," IEEE (1986). As one example, the Labell reference describes systems for automatic vehicle location (AVL) for monitoring and real time reporting on the status and location of vehicles.

18. Further, the claims are directed to unpatentable subject matter and thus do not meet the threshold of 35 U.S.C. § 101, as the Supreme Court has interpreted that provision in *Alice Corporation Party v. CLS Bank International*, 134 S. Ct. 2347 (2014). Under the *Alice* two-part test for subject matter eligibility, a court first determines whether the challenged patent claim is directed to an "abstract idea" or other category of ineligible subject matter and, if so, whether the claim recites an "inventive concept" that transforms the abstract idea into an eligible invention. *Id.* at 2355-57. Claims 5 and 7 and the other claims of the '207 Patent are directed to the abstract idea of letting a customer know when his or her package will arrive. That can be done by human beings with a telephone and a watch or calendar. The claims recite no inventive concept that somehow elevates the claims. Indeed, the claims do not even recite any particular computer hardware or other gadgets. Nor do the claims identify a technical solution to any particular technical problem. Even if the claims were interpreted as reciting some computer system, it would be generic computer components at best. As the Federal Circuit recognized, *Alice* "made clear that a claim directed to an abstract idea does not

move into 35 U.S.C. § 101 eligibility territory by merely requiring generic computer implementation." *buySAFE, Inc. v. Google, Inc.,* 765 F.3d 1350, 1354-55 (Fed. Cir. 2014). As the Federal Circuit also observed, claims directed to fundamental economic activity (*e.g.*, e-commerce, business methods, and the like) implemented by generic computer technology are the most likely to be found invalid under § 101. *See Mortgage Grader, Inc. v. First Choice Loan Servs. Inc.*, No. 2015-1415, 2015 WL 9854966, at *9 (Fed. Cir. Jan. 20, 2015). The claims of the '207 Patent are directed to fundamental economic activity or business methods (*i.e.*, logistics, essentially) and, at best, are implemented by generic computer technology. As such, the claims fail the *Alice* test and thus § 101.

B. The '359 Patent

19. The '359 Patent is entitled "Notification Systems and Methods with User-Definable Notifications Based Upon Occurance [sic] of Events." It issued on June 7, 2005. A copy of the '359 Patent is attached as Exhibit C.

20. In the Demand Letter (Exhibit A), S&T has accused Academy of infringing claim 41 of the '359 Patent. Claim 41 is directed to "[a] notification system, comprising: (a) means for permitting a user to predefine one or more events that will cause creation and communication of a notification relating to the status of a mobile vehicle in relation to a location, comprising: (1) means for permitting the user to electronically communicate during a first communication link with the notification system from a user communications device that is remote from the notification system and the vehicle whose travel is being monitored, the notification system being located remotely from the vehicle; and (2) means for receiving during the first communication

link an identification of the one or more events relating to the status of the vehicle, wherein the one or more events comprises at least one of the following: distance information specified by the user that is indicative of a distance between the vehicle and the location, location information specified by the user that is indicative of a location or region that the vehicle achieves during travel, time information specified by the user that is indicative of a time for travel of the vehicle to the location, or a number of one or more stops that the vehicle accomplishes prior to arriving at the location; and (b) means for establishing a second communication link between the system and the user upon occurrence of the one or more events achieved by the mobile vehicle during the travel."

21. Academy does not infringe Claim 41 for at least the following reasons. Claim 41 is directed to a notification system that requires, *inter alia*, "means for establishing a second communication link between the system and the user upon occurrence of the one or more events achieved by the mobile vehicle during the travel." The '359 Patent specification teaches that the claimed systems track in real time the progress of the delivery vehicle and then report that information to the customer expecting the package. The accused Academy online ordering platform (at www.academy.com), however, does not monitor the progress of the delivery vehicle in real time and then update the customer on the progress of the vehicle. Specifically, it does not send or establish reporting on events "achieved by the mobile vehicle during the travel." Rather, to the extent that the Academy system notifies the customer, Academy merely notifies the customer that the order has been received, confirms the shipment timing selected by the customer (i.e., 3-5 business days), and later notifies the customer

when a tracking number has been assigned. Academy does not update the current location of the package as it travels in the delivery vehicle.

22. Claim 41 of the '359 Patent, as well as other claims, are invalid for failure to comply with one or more of the sections of the Patent Code governing validity, namely, 35 U.S.C. §§ 101, 102, 103, and 112. Without limiting further arguments to be developed during the litigation, the claims of the '359 Patent are anticipated or rendered obvious by certain prior art references, alone or in combination, that were not considered by the USPTO in issuing the patent. Such prior art includes, *inter alia*, Labell, et al., "Advanced Public Transportation Systems: The State of the Art Update '92" (April 1992); U.S. Patent No. 4,804,937, "Vehicle monitoring arrangement and system" (1989); and Williams, "Radiodetermination Satellite Service: Applications in Railroad Management," IEEE (1986). As one example, the Labell reference describes systems for automatic vehicle location (AVL) for monitoring and real time reporting on the status and location of vehicles.

23. Further, the claims are directed to unpatentable subject matter and thus do not meet the threshold of 35 U.S.C. § 101, as the Supreme Court has interpreted that provision in *Alice Corporation Party v. CLS Bank International*, 134 S. Ct. 2347 (2014). Under the *Alice* two-part test for subject matter eligibility, a court first determines whether the challenged patent claim is directed to an "abstract idea" or other category of ineligible subject matter and, if so, whether the claim recites an "inventive concept" that transforms the abstract idea into an eligible invention. *Id.* at 2355-57. Claim 41 and the other claims of the '359 Patent are directed to the abstract idea of letting a customer know when his or her package will arrive. That can be done by human beings with a telephone

and a watch or calendar. The claims recite no inventive concept that somehow elevates the claims. Indeed, the claims do not even recite any particular computer hardware or other gadgets. Nor do the claims identify a technical solution to any particular technical problem. Even if the claims were interpreted as reciting some computer system, it would be generic computer components at best. As the Federal Circuit recognized, *Alice* "made clear that a claim directed to an abstract idea does not move into 35 U.S.C. § 101 eligibility territory by merely requiring generic computer implementation." *buySAFE,* 765 F.3d at 1354-55. As the Federal Circuit also observed, claims directed to fundamental economic activity (*e.g.*, e-commerce, business methods, and the like) implemented by generic computer technology are the most like to be found invalid under § 101. *See Mortgage Grader, Inc*, 2015 WL 9854966, at *9. The claims of the '359 Patent are directed to fundamental economic activity or business methods (*i.e.*, logistics, essentially) and, at best, are implemented by generic computer technology. As such, the claims fail the *Alice* test and thus § 101.

C. The '299 Patent

24. The '299 Patent is entitled "Notification Systems and Methods With Notifications Based Upon Prior Stop Locations." It issued on July 13, 2004. A copy of the '299 Patent is attached as Exhibit D.

25. In the Demand Letter (Exhibit A), S&T has accused Academy of infringing claim 79 of the '299 Patent. Claim 79 is directed to "[a] system, comprising: means for maintaining delivery information identifying a plurality of stop locations; means for monitoring travel data associated with a vehicle in relation to the delivery information; means for, when the vehicle approaches, is at, or leaves a stop location:

determining a subsequent stop location in the delivery information; determining user defined preferences data associated with the stop location, the user defined preferences data including a distance between the vehicle and the subsequent stop that corresponds to when the party wishes to receive the communication; and sending a communication to a party associated with the subsequent stop location in accordance with the user defined preferences data to notify the party of impending arrival at the subsequent stop location."

26. Academy does not infringe Claim 79 for at least the following reasons. Claim 79 requires, *inter alia*, "monitoring travel data associated with a vehicle," "determining a subsequent stop location," and then sending a communication notifying the customer "of the impending arrival" of the vehicle at the delivery address. The '299 Patent specification teaches that the claimed systems track in real time the progress of the delivery vehicle at each predefined stop and then report that information to the ultimate destination. The accused Academy online ordering platform (at www.academy.com), however, does not monitor the progress of the delivery vehicle in real time and then send an email to update the customer on the progress of the vehicle. Rather, to the extent that the Academy system notifies the customer, Academy merely notifies the customer that the order has been received, confirms the shipment timing selected by the customer (i.e., 3-5 business days), and later notifies the customer when a tracking number has been assigned. Academy does not initiate a notification to the customer with travel data (*e.g.*, the current location of the package as it travels in the delivery vehicle).

27. Claim 79 of the '299 Patent, as well as other claims, are invalid for failure to comply with one or more of the sections of the Patent Code governing validity, namely, 35 U.S.C. §§ 101, 102, 103, and 112. Without limiting further arguments to be

developed during the litigation, the claims of the '299 Patent are anticipated or rendered obvious by certain prior art references, alone or in combination, that were not considered by the USPTO in issuing the patent. Such prior art includes, *inter alia*, Labell, et al., "Advanced Public Transportation Systems: The State of the Art Update '92" (April 1992); U.S. Patent No. 4,804,937, "Vehicle monitoring arrangement and system" (1989); and Williams, "Radiodetermination Satellite Service: Applications in Railroad Management," IEEE (1986). As one example, the Labell reference describes systems for automatic vehicle location (AVL) for monitoring and real time reporting on the status and location of vehicles.

28. Further, the claims are directed to unpatentable subject matter and thus do not meet the threshold of 35 U.S.C. § 101, as the Supreme Court has interpreted that provision in *Alice Corporation Party v. CLS Bank International*, 134 S. Ct. 2347 (2014). Under the *Alice* two-part test for subject matter eligibility, a court first determines whether the challenged patent claim is directed to an "abstract idea" or other category of ineligible subject matter and, if so, whether the claim recites an "inventive concept" that transforms the abstract idea into an eligible invention. *Id.* at 2355-57. Claim 79 and the other claims of the '299 Patent are directed to the abstract idea of letting a customer know when his or her package will arrive. That can be done by human beings with a telephone and a watch or calendar. The claims recite no inventive concept that somehow elevates the claims. Indeed, the claims do not even recite any particular computer hardware or other gadgets. Nor do the claims identify a technical solution to any particular technical problem. Even if the claims were interpreted as reciting some computer system, it would be generic computer components at best. As the Federal Circuit recognized, *Alice* "made

clear that a claim directed to an abstract idea does not move into 35 U.S.C. § 101 eligibility territory by merely requiring generic computer implementation." *buySAFE,* 765 F.3d at 1354-55. As the Federal Circuit also observed, claims directed to fundamental economic activity (*e.g.*, e-commerce, business methods, and the like) implemented by generic computer technology are the most like to be found invalid under § 101. *See Mortgage Grader,* 2015 WL 9854966, at *9. The claims of the '299 Patent are directed to fundamental economic activity or business methods (*i.e.*, logistics, essentially) and, at best, are implemented by generic computer technology. As such, the claims fail the *Alice* test and thus § 101.

C. The '970 Patent

29. The '970 Patent is entitled "System and Method for an Advance Notification System for Monitoring and Reporting Proximity of a Vehicle." It issued on July 15, 2008. A copy of the '970 Patent is attached as Exhibit E.

30. In the Demand Letter (Exhibit A), S&T has accused Academy of infringing claim 1 of the '970 Patent. Claim 1 is directed to "[a] computer based notification system, comprising: means for enabling communication with a user that is designated to receive delivery of a package; means for presenting one or more selectable options to the user, the selectable options including at least an activation option for instigating monitoring of travel data associated with a vehicle that is delivering the package to the user; means for requesting entry by the user of a package identification number or package delivery number, each pertaining to delivery of the package; means for identifying the vehicle based upon the entry; means for requesting entry by the user of contact information indicating one or more communication media to be used in

connection with a notification communication to the user; means for monitoring the travel data; and means for initiating the notification communication pertaining to the package via the one or more communication media, based upon the travel data."

31. Academy does not infringe Claim 1 for at least the following reasons. Claim 1 requires, *inter alia*, "means for initiating the notification communication pertaining to the package via the one or more communication media, based upon the travel data." The accused Academy online ordering platform (at www.academy.com), however, does not initiate a notification communication "based upon the travel data." The '970 Patent defines "travel data" in the context of real time, periodically updated information about the delivery vehicle containing the package, such as its location or distance and time from the delivery address. *See, e.g.*, Exhibit E, '970 Patent, at 6:17-30. Rather, to the extent that the Academy system notifies the customer, Academy merely notifies the customer that the order has been received, confirms the shipment timing selected by the customer (i.e., 3-5 business days), and later notifies the customer when a tracking number has been assigned. Academy does not initiate a notification to the customer with travel data (*e.g.*, the current location of the package as it travels in the delivery vehicle).

32. Claim 1 also requires "means for identifying the vehicle based upon the entry [of the package identification number]." The Academy platform does not identify the vehicle delivering the package.

33. Claim 1 of the '970 Patent, as well as other claims, are invalid for failure to comply with one or more of the sections of the Patent Code governing validity, namely, 35 U.S.C. §§ 101, 102, 103, and 112. Without limiting further arguments to be

developed during the litigation, the claims of the '970 Patent are anticipated or rendered obvious by certain prior art references, alone or in combination, that were not considered by the USPTO in issuing the patent. Such prior art includes, *inter alia*, Labell, et al., "Advanced Public Transportation Systems: The State of the Art Update '92" (April 1992); U.S. Patent No. 4,804,937, "Vehicle monitoring arrangement and system" (1989); and Williams, "Radiodetermination Satellite Service: Applications in Railroad Management," IEEE (1986). As one example, the Labell reference describes systems for automatic vehicle location (AVL) for monitoring and real time reporting on the status and location of vehicles.

34. Further, the claims are directed to unpatentable subject matter and thus do not meet the threshold of 35 U.S.C. § 101, as the Supreme Court has interpreted that provision in *Alice Corporation Party v. CLS Bank International*, 134 S. Ct. 2347 (2014). Under the *Alice* two-part test for subject matter eligibility, a court first determines whether the challenged patent claim is directed to an "abstract idea" or other category of ineligible subject matter and, if so, whether the claim recites an "inventive concept" that transforms the abstract idea into an eligible invention. *Id.* at 2355-57. Claim 1 and the other claims of the '970 Patent are directed to the abstract idea of letting a customer know when his or her package will arrive. That can be done by human beings with a telephone and a watch or calendar. The claims recite no inventive concept that somehow elevates the claims. Indeed, although the claims nominally recite "a computer based" system in the preamble, the claims do not actually identify any particular computer hardware. Nor do the claims identify a technical solution to any particular technical problem. Even if the claims were interpreted as reciting some computer system, it would be generic

computer components at best. As the Federal Circuit recognized, *Alice* "made clear that a claim directed to an abstract idea does not move into 35 U.S.C. § 101 eligibility territory by merely requiring generic computer implementation." *buySAFE,* 765 F.3d at 1354-55. As the Federal Circuit also observed, claims directed to fundamental economic activity (*e.g.*, e-commerce, business methods, and the like) implemented by generic computer technology are the most like to be found invalid under § 101. *See Mortgage Grader,* 2015 WL 9854966, at *9. The claims of the '970 Patent are directed to fundamental economic activity or business methods (*i.e.*, logistics, essentially) and, at best, are implemented by generic computer technology. As such, the claims fail the *Alice* test and thus § 101.

COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '207 PATENT

35. Academy realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

36. A concrete and immediate controversy has arisen between the parties regarding infringement of the '207 Patent and Academy's obligation, if any, to pay S&T for rights in the patent. S&T has indicated that it will seek to enforce the patent in litigation against Academy at some unspecified date.

37. For at least the reasons alleged above, Academy has not infringed, induced others to infringe, or contributed to the infringement by others of the '207 Patent.

38. Academy seeks and is entitled to a declaratory judgment that neither it nor its online ordering platform infringe or have infringed under 35 U.S.C. § 271 (or any sub-section thereof) either Claim 5 or any other claim of the '207 Patent.

COUNT II
DECLARATORY JUDGMENT OF INVALIDITY OF THE '207 PATENT

39. Academy realleges and incorporates the preceding paragraphs as if fully set forth herein.

40. A concrete and immediate controversy has arisen between the parties regarding validity of the '207 Patent and Academy's obligation, if any, to pay S&T for rights in the patent. S&T has indicated that it will seek to enforce the patent in litigation against Academy at some unspecified date.

41. For at least the reasons alleged above, the '207 Patent is invalid for failure to comply with the requirements of Title 35 of the United States Code, including, without limitation, one or more of §§ 101, 102, 103 and 112. In particular, the claims are anticipated or obvious in view of prior art not considered by the USPTO. Further, the claims are directed to ineligible abstract ideas and thus fail to meet the requirements of § 101.

42. Academy seeks and is entitled to a declaratory judgment that all claims in the '207 Patent are invalid.

COUNT III
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '359 PATENT

43. Academy realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

44. A concrete and immediate controversy has arisen between the parties regarding infringement of the '359 Patent and Academy's obligation, if any, to pay S&T for rights in the patent. S&T has indicated that it will seek to enforce the patent in litigation against Academy at some unspecified date.

45. For at least the reasons alleged above, Academy has not infringed, induced others to infringe, or contributed to the infringement by others of the '359 Patent.

46. Academy seeks and is entitled to a declaratory judgment that neither it nor its online ordering platform infringe or have infringed under 35 U.S.C. § 271 (or any sub-section thereof) either Claim 41 or any other claim of the '359 Patent.

COUNT IV
DECLARATORY JUDGMENT OF INVALIDITY OF THE '359 PATENT

47. Academy realleges and incorporates the preceding paragraphs as if fully set forth herein.

48. A concrete and immediate controversy has arisen between the parties regarding validity of the '359 Patent and Academy's obligation, if any, to pay S&T for rights in the patent. S&T has indicated that it will seek to enforce the patent in litigation against Academy at some unspecified date.

49. For at least the reasons alleged above, the '359 Patent is invalid for failure to comply with the requirements of Title 35 of the United States Code, including, without limitation, one or more of §§ 101, 102, 103 and 112. In particular, the claims are anticipated or obvious in view of prior art not considered by the USPTO. Further, the claims are directed to ineligible abstract ideas and thus fail to meet the requirements of § 101.

50. Academy seeks and is entitled to a declaratory judgment that all claims in the '359 Patent are invalid.

COUNT V
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '299 PATENT

51. Academy realleges and incorporates by reference the preceding

paragraphs as if fully set forth herein.

52. A concrete and immediate controversy has arisen between the parties regarding infringement of the '299 Patent and Academy's obligation, if any, to pay S&T for rights in the patent. S&T has indicated that it will seek to enforce the patent in litigation against Academy at some unspecified date.

53. For at least the reasons alleged above, Academy has not infringed, induced others to infringe, or contributed to the infringement by others of the '299 Patent.

54. Academy seeks and is entitled to a declaratory judgment that neither it nor its online ordering platform infringe or have infringed under 35 U.S.C. § 271 (or any sub-section thereof) either Claim 79 or any other claim of the '299 Patent.

COUNT VI
DECLARATORY JUDGMENT OF INVALIDITY OF THE '299 PATENT

55. Academy realleges and incorporates the preceding paragraphs as if fully set forth herein.

56. A concrete and immediate controversy has arisen between the parties regarding validity of the '299 Patent and Academy's obligation, if any, to pay S&T for rights in the patent. S&T has indicated that it will seek to enforce the patent in litigation against Academy at some unspecified date.

57. For at least the reasons alleged above, the '299 Patent is invalid for failure to comply with the requirements of Title 35 of the United States Code, including, without limitation, one or more of §§ 101, 102, 103 and 112. In particular, the claims are anticipated or obvious in view of prior art not considered by the USPTO. Further, the claims are directed to ineligible abstract ideas and thus fail to meet the requirements of § 101.

58. Academy seeks and is entitled to a declaratory judgment that all claims in the ’299 Patent are invalid.

COUNT VII
DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE ’970 PATENT

59. Academy realleges and incorporates by reference the preceding paragraphs as if fully set forth herein.

60. A concrete and immediate controversy has arisen between the parties regarding infringement of the ’970 Patent and Academy’s obligation, if any, to pay S&T for rights in the patent. S&T has indicated that it will seek to enforce the patent in litigation against Academy at some unspecified date.

61. For at least the reasons alleged above, Academy has not infringed, induced others to infringe, or contributed to the infringement by others of the ’970 Patent.

62. Academy seeks and is entitled to a declaratory judgment that neither it nor its online ordering platform infringe or have infringed under 35 U.S.C. § 271 (or any sub-section thereof) either Claim 1 or any other claim of the ’970 Patent.

COUNT VIII
DECLARATORY JUDGMENT OF INVALIDITY OF THE ’970 PATENT

63. Academy realleges and incorporates the preceding paragraphs as if fully set forth herein.

64. A concrete and immediate controversy has arisen between the parties regarding validity of the ’970 Patent and Academy’s obligation, if any, to pay S&T for rights in the patent. S&T has indicated that it will seek to enforce the patent in litigation against Academy at some unspecified date.

65. For at least the reasons alleged above, the ’970 Patent is invalid for failure

to comply with the requirements of Title 35 of the United States Code, including, without limitation, one or more of §§ 101, 102, 103 and 112. In particular, the claims are anticipated or obvious in view of prior art not considered by the USPTO. Further, the claims are directed to ineligible abstract ideas and thus fail to meet the requirements of § 101.

66. Academy seeks and is entitled to a declaratory judgment that all claims in the '970 Patent are invalid.

PRAYER FOR RELIEF

Academy respectfully requests a judgment against S&T as follows:

A. A finding in favor of Academy and against S&T on all of Academy's claims;

B. A declaration that Academy does not infringe the Patents-in-Suit;

C. A declaration that the Patents-in-Suit are invalid;

D. An determination that this case is exceptional in Academy's favor and award to Academy of its costs and attorneys' fees incurred in this action; and

E. Further relief as the Court may deem just and proper.

JURY DEMAND

Academy hereby demands a trial by jury on all issues so triable.

Dated: February 16, 2016

Respectfully submitted,

/s/ Darin M. Klemchuk

Darin M. Klemchuk
Attorney-in-Charge
State Bar No. 24002418
Southern District of Texas Bar ID #23662

Kirby B. Drake
State Bar No. 24036502
Southern District of Texas Bar ID #1142357
KLEMCHUK LLP
Campbell Centre II
8150 North Central Expressway, 10th Floor
Dallas, TX 75206
Telephone: (214) 367-6000
Facsimile: (214) 367-6001
Email: darin.klemchuk@klemchuk.com
kirby.drake@klemchuk.com

Counsel for Plaintiff Academy, Ltd.