

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

MASON COMPANIES, INC.,

Plaintiff,

Civil Action No. 16-CV-411

v.

SHIPPING AND TRANSIT, LLC,

Defendant.

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Mason Companies, Inc. (“Mason”) for its Complaint against Defendant Shipping and Transit, LLC (“S&T”) hereby alleges as follows:

1. This is a claim pursuant to 18 U.S.C. §§ 1964(c) for the recovery of damages relating to S&T’s pattern of threatening frivolous and bad faith lawsuits in violation of 18 U.S.C. § 1962 of the Racketeering Influenced and Corrupt Organization (“RICO”) Act.

2. This is further a claim pursuant to Wisconsin Statute § 100.197(3)(b) for the recovery of damages relating to S&T’s deceptive, misleading, and/or false statements in a patent notification sent to Masseys.com, an online retail brand of Mason, in violation of Wisconsin Statute § 100.197(2)(b).

3. This is further a claim pursuant to 28 U.S.C. § 2201 for a declaratory judgment that four patents allegedly owned by S&T are invalid. The four patents at issue are U.S. Patent Nos. 6,415,207 (the “’207 patent”), 6,763,299 (the “’299 patent”), 7,400,970 (the “’970 patent”), and 6,904,359 (the “’359 patent”), and are attached as Exhibit A.

4. This is further a claim pursuant to 28 U.S.C. § 2201 for a declaratory judgment that the ordering systems and/or certain functions of the process used for notifying customers of their purchases and shipments used by Mason in the operation of its online and mail order retail brands do not infringe the '207, '299, '970, or '359 patents.

THE PARTIES

5. Mason is a Wisconsin corporation with the principal place of business at 1251 First Avenue, Chippewa Falls, WI 54729. Mason operates, among other things, the online retail brand Maseys.com. Mason and Maseys.com are hereinafter collectively referred to as "Mason."

6. Upon information and belief, S&T is a Florida Limited Liability Company with a principal place of business located at 711 Southwest 24th Avenue, Boynton Beach, Florida 33435. Upon information and belief, S&T was formerly known as ArrivalStar S.A. and Melvino Technologies Limited.

JURISDICTION AND VENUE

7. Mason incorporates all previous allegations by reference.

8. This Court has subject matter jurisdiction over this action under 18 U.S.C. §§ 1964(a) and 1964(c).

9. This Court also has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 1338, and 2201 because a present, genuine, actual, and justiciable controversy exists under 28 U.S.C. §§ 2201 and 2202 and the patent laws, 35 U.S.C. § 1 *et seq.*, between Mason and S&T regarding, among other things, Mason's alleged infringement and the validity of the '207, '299, '970, and '359 patents.

10. Because this Court has original jurisdiction over the declaratory judgment claims and the RICO claims in this action, this Court therefore has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 as such claims are so related to the patent and RICO claims that they form part of the same case or controversy under Article III of the United States Constitution. Each claim arises out of the baseless, misleading, and bad faith claims of infringement asserted by S&T in a patent notification letter dated May 17, 2016 (the “Demand Letter”) addressed to one of Mason’s online retail brands, Masseys.com, in which it strongly implied that if Mason did not respond to the letter within thirty days, and did not pay a substantial “license fee”, S&T would file a lawsuit as it and its predecessor companies have done against hundreds of other targets. A copy of the Demand Letter is attached as Exhibit B.

11. This Court has personal jurisdiction over S&T. On information and belief, S&T is in the business of licensing and enforcing its patent portfolio. Accordingly, S&T regularly conducts business through its patent licensing operations throughout the U.S. and in this judicial district and within this state and/or derives substantial revenue from individuals and entities in Wisconsin.

12. Further, S&T mailed its Demand Letter to Mason here in Wisconsin for purposes of obtaining a monetary payment. S&T is therefore currently conducting business in this judicial district.

13. Venue in this case is proper pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1400(b) and 18 U.S.C § 1965(a).

BACKGROUND

14. Mason is a family business that has been headquartered in Chippewa Falls, Wisconsin since it was founded more than 100 years ago by August Mason and his son Bert in

1904. Mason is in the retail sales business, selling a large variety of goods primarily through its mail order and online catalogs, including Masseys, Stoneberry, Shoemall, and K. Jordan, among others. Upon information and belief, prior to sending the Demand Letter, S&T understood that Masseys.com is a Mason brand.

A. S&T and the Demand Letter

15. S&T purports to own the '207, '299, '970, and '359 patents. On or about May 17, 2016, S&T, through its counsel, sent Mason a letter alleging infringement of the '207, '299, '970, and '359 patents. Specifically, S&T's letter alleged that by providing customers with shipping notices, shipping confirmation emails, and/or updates on customer orders, Mason infringes or infringed one or more of the '207, '299, '970, and '359 patents.

16. The Demand Letter contained what purported to be a description and claim charts of S&T's theories for how Mason's business practices, with reference to the Masseys.com website, allegedly infringe the '207, '299, '970, and '359 patents, three of which patents expired in 2013.

17. In the Demand Letter, S&T demanded a payment of \$25,000 in lieu of litigation, and listed numerous lawsuits that S&T had filed against companies that did not succumb to its demands. S&T further threatened that if it did not receive a response to the letter within 30 days, it would "assume that Masseys is not interested in an amicable resolution of this matter."

18. The Demand Letter indicated that S&T's business model includes sending notice letters regarding potential infringement and then filing patent infringement lawsuits in the federal courts when the letters fail to extract fees.

19. S&T's Demand Letter further indicated that it has licensed its technology to several hundred entities, and has been involved in at least several dozen lawsuits.

20. Despite mailing the Demand Letter to Mason in Wisconsin, S&T failed to comply with Wisconsin state law regulating the type of communications that may/must be in such a letter.

21. Wisconsin Statute § 100.197 requires that all patent notifications include the name and physical address of the owner of each patent and all other persons having a right to enforce the patent. S&T included the name of the inventor in its demand letter, but chose not to include his physical address or any indication of whether other individuals have any right to enforce the listed patents.

22. Wisconsin Statute § 100.197 also requires the identification of each pending or completed court or administrative proceeding concerning each patent. S&T's demand letter acknowledged that it was not providing this information. It provided a list of lawsuits it has been involved in, but stated that this was only "some of them."

23. Wisconsin Statute § 100.197 further requires a factual analysis setting forth in detail the theory of infringement for each asserted claim. Despite alleging that Mason infringes claim 8 of the '970 patent, the Demand Letter is completely devoid of any analysis relating to infringement of this claim.

24. Wisconsin Statute § 100.197 further prohibits false, misleading, or deceptive information in a patent notification. S&T violates this statute throughout its Demand Letter by stating that certain patent claims are infringed, but completely ignoring particular claim elements, limitations, and the obvious fact that Mason's notification system simply does not infringe. This is misleading at best.

25. S&T and its predecessor companies, including ArrivalStar S.A., are business entities organized for the purpose of filing patent infringement lawsuits in order to extract license

fees from individuals and companies, including Mason, based upon objectively unreasonable and baseless claims of patent infringement. Rather than practice the claimed inventions of the '207, '299, '970, and '359 patents, S&T's entire business model appears to be to send deficient demand letters, like the one received by Mason, to companies in an attempt to obtain licensing fees from them under threat of litigation. S&T and its predecessors have filed more than 500 patent infringement actions asserting one or more of the four patents in suit or other patents they own relating to the same general subject matter. S&T brings these objectively unreasonable and baseless claims of patent infringement without fear that it will have to support them because it knows that the cost of fighting the allegations and the related disruption of business will outweigh the "upfront discounted license fee."

26. Mason has a reasonable apprehension that S&T will disrupt Mason's business by filing a suit against Mason for alleged infringement of the '207, '299, '970, and '359 patents and attempting to enjoin Mason's activities and/or claim it is entitled to monetary damages. Given the clear threat of litigation described in the demand letter and S&T's established pattern of filing suit when the demanded fees are not paid, S&T's allegations have created a concrete and immediate justiciable controversy between Mason and S&T.

B. The '970 Patent

27. S&T claims to own the '970 patent. The '970 patent is entitled "System and method for an advance notification system for monitoring and reporting proximity of a vehicle." This patent expired on May 18, 2013. S&T may therefore only seek damages for actions taking place on or before May 18, 2013, and may not seek damages for any alleged current or future infringement. Notably, S&T's demand letter does not claim that any of the alleged acts of infringement took place prior to such a date. Moreover, S&T failed to comply with the marking

requirements of 35 U.S.C. § 287 and did not provide actual notice of alleged infringement until 2016. Therefore, S&T is not entitled to damages for any alleged past infringement of this patent.

28. The Demand Letter accuses Mason of infringing claims 1 and 8 of the '970 patent. Mason does not infringe these, or any other claim, of the '970 patent because it does not practice all of the limitations of any given claim. Illustrative, but non-exhaustive examples include the following:

29. Claim 1 of the '970 patent recites the following:

1. 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.

30. Mason does not infringe this, or any other claim of the '970 patent, because the only information it provides regarding the shipment of the package is a confirmation that the package has shipped—nothing more. When a customer purchases goods from Maseys.com, or any of Mason's other online brands, the customer receives a confirmation that the purchase occurred. The customer also receives an email notifying them when their product has shipped, along with a link to a third party website where more information can be found. Mason does not

provide any of the information on the third party site, it merely explains to the customer where they can find such information on the internet. As a result, the only notification that Mason provides is a notification that the product has shipped.

31. Claim 1 of the '970 patent uses the term "comprising" followed by seven stated means. To be infringed, the claim therefore requires the presence in an accused system of each of these listed means. In order to infringe claim 1, an accused computer based notification system must contain each of these seven means. Mason's system fails to meet several of the recited limitations of the claim.

32. S&T acknowledges that claim 1 of the '970 patent is a means-plus-function claim. The remaining claims of the '970 patent are also drafted as means plus function claims. Under 35 U.S.C. § 112 ¶ 6, such claims are constrained by the structure, material, and acts described in the specification. The scope of each of these claims is therefore limited by the disclosure of the '970 patent specification. In its claim chart, S&T did not even attempt to identify the corresponding structures or acts in the specification that define the scope of the claim's means-plus-function limitations.

33. One of the limitations of claim 1 is that the notification must be "based upon the travel data." The specification of the '970 patent defines travel data in the context of real time, periodically updated information about the delivery vehicle, such as its location or distance and time from the delivery address. *See*, '970 patent at 6:17-30. Mason does not provide notifications regarding the specific location of a package as it travels in the delivery vehicle, and therefore it cannot infringe this claim. In fact, Mason does not provide any travel information at all. Mason notifies a customer that a package has shipped, not of the progress of the shipment.

34. Claim 1 also requires a “means for identifying the vehicle based upon the entry.” Mason does not provide such means, and therefore cannot infringe this claim. Notably, S&T has not alleged that Mason’s business practices provide such information—this limitation is ignored in the Demand Letter.

35. Claim 1 further requires “selectable options including at least an activation option for instigating monitoring of travel data.” Mason does not provide a selectable option to activate monitoring of travel data. Mason does not provide monitoring of travel data at all, and the shipment notification that Mason does provide is transmitted automatically; customers do not have the option to activate or deactivate this notification.

36. Although S&T alleges infringement of claim 8, it provided no analysis relating to that claim in its Demand Letter. Mason cannot infringe claim 8 for at least the reason that, like claim 1, it requires a means for identifying the particular vehicle carrying the package, which Mason does not provide.

37. Because the only notification Mason provides to a customer—the initial shipping notification—does not perform the claimed steps, Mason cannot infringe any claim of the ’970 patent.

38. To the extent S&T is alleging infringement based on tracking information made available to the customer beyond that notification, such information is not provided by Mason and Mason therefore cannot be liable. Mason ships its products using the services of the United States Postal Service, FedEx, and UPS. When Mason sends a shipping notification to a customer, it includes a link to the shipper’s website where a customer can obtain additional information regarding the status of their package. This information is not gathered, presented, provided, or verified by Mason—Mason merely tells the customer where they can go on the

internet to find it. As a result, any alleged infringement based on this information is not attributable to Mason.

39. Moreover, S&T acknowledges that it has license agreements with FedEx and UPS. In addition, S&T's predecessor ArrivalStar had the claims it brought against the United States Postal Service for infringement of the '970 and '359 patents dismissed with prejudice. Therefore, the services provided by the shippers cannot form a basis for an infringement claim. Although S&T claims that Mason is using a "non-licensed carrier" to ship its products, S&T does not identify the alleged "non-licensed carrier." Upon information and belief, the assertion in the Demand Letter that Mason utilizes the services of a "non-licensed carrier" was made in bad faith and without any factual basis.

40. The claims of the '970 patent are also invalid for failure to comply with one or more of 35 U.S.C. §§ 101, 102, 103, and 112.

41. Without limiting its ability to further develop invalidity theories, Mason avers that the claims of the '970 patent are at least anticipated and/or rendered obvious by prior art references that were not considered by the USPTO during prosecution. These references include at least the following: *Labell, et al.*, "Advanced Public Transportation Systems: The State of the Art Update '92"; U.S. Patent No. 4,804,937; and Williams, "Radiodetermination Satellite Service: Applications in Railroad Management," IEEE (1986). For example, *Labell* discloses systems for automatic vehicle location and for monitoring and real time reporting of the vehicle status and location.

42. The claims of the '970 patent are further invalid as they are directed at unpatentable subject matter and therefore do not meet the threshold of 35 U.S.C. § 101, as interpreted by the Supreme Court in *Alice Corp. Pty. v. CLS Bank Int'l.*, 134 S. Ct. 2347 (2014).

The claims of the '970 patent are directed at an abstract idea of letting a customer know the status of their package, and therefore must recite some other “inventive concept” in order to be valid under *Alice*. *Id.* at 2355-57. Because this abstract idea can be accomplished by a person with a cellphone, which is not inventive, there is no further inventive concept that would make these claims patent eligible. The recital of a computer based system in the preamble of the claims is not sufficient under controlling Federal Circuit precedent. *See, buySAFE, Inc. v. Google, Inc.*, 765 F.3d 1350, 1354-55 (Fed. Cir. 2014). The fact that these claims recite a fundamental economic activity, such as e-commerce, implemented by generic computer technology further supports the invalidity of such claims. *See, Mortgage Grader, Inc. First Choice Loan Services, Inc.*, 811 F.3d 1314 (Fed. Cir. 2016) (“[T]he use of a generic computer to implement a ‘fundamental economic practice’ cannot provide an inventive concept sufficient to save claims from patent ineligibility.”).

C. The '207 Patent

43. S&T claims to own the '207 patent, which it is asserting against Mason. The '207 patent is entitled “System and method for automatically providing vehicle status information.” This patent was filed on March 1, 2000 and claims priority to a provisional application filed on March 1, 1999.

44. S&T has asserted claim 5 of the '207 patent against Mason. Mason does not infringe this, or any other claim, of the '207 patent because the shipment notification that it provides to customers does not meet the limitations of any given claim. Illustrative, but non-exhaustive examples include:

45. Claim 5 states:

5. 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.

46. Like the claims of the '970 patent, claim 5 of the '207 patent is a means-plus-function claim and, therefore, is defined based on the disclosure of the patent's specification. The specification of the '207 patent makes clear that "means for maintaining status information associated with a vehicle, said status information indicative of a current proximity of said identified vehicle" means tracking the real time progress of the vehicle. Mason cannot infringe this claim as its customer notifications do not contain either real time positioning information or vehicle identification information. Notably, S&T does not allege that Mason provides this information—it merely claims that Mason provides a "shipment confirmation." S&T's failure to explain how this shipment confirmation could possibly meet the limitations of claim 5 of the '207 patent demonstrates the level of deceit involved in the Demand Letter. A shipment confirmation is provided when shipment begins, and is not capable of providing real-time proximity information.

47. To the extent S&T is alleging infringement based on tracking information made available to the customer beyond this point, such information is not provided by Mason and Mason therefore cannot be liable for the reasons explained above.

48. Moreover, S&T failed to comply with the marking requirements of 35 U.S.C. § 287 and did not provide actual notice of alleged infringement until 2016. Therefore, S&T is not entitled to damages for any alleged past infringement of this patent and may only seek damages for allegations of current and future infringement.

49. The claims of the '207 patent are invalid for at least the same reasons as discussed above in reference to the '970 patent.

D. The '359 Patent

50. S&T claims to own the '359 patent, which is entitled "Notification systems and methods with user-definable notifications based upon occurrence of events." This patent expired on May 18, 2013. S&T may therefore only seek damages for actions taking place on or before May 18, 2013, and may not seek damages for any alleged current or future infringement.

Notably, S&T's demand letter does not claim that any of the alleged acts of infringement took place prior to such a date. Moreover, S&T failed to comply with the marking requirements of 35 U.S.C. § 287 and did not provide actual notice of alleged infringement until 2016. Therefore, S&T is not entitled to damages for any alleged past infringement of this patent.

51. The Demand Letter asserts that Mason infringes claim 41 of this patent. Mason does not infringe this, or any other claim, of the '359 patent because the shipping notification that it provides to customers does not meet all of the limitations of any given claim. Illustrative, but non-exhaustive examples include the following:

52. Claim 41 states:

41. 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*.

53. Like the claims of the other patents at issue, claim 41 of the '359 patent is a means-plus-function claim and is, therefore, limited by the specification. Claim 41 requires a “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 specification teaches that this means that the location of the vehicle is tracked in real-time and then communicated to the customer. Mason’s customer notifications do not have this capability, and therefore cannot infringe this claim.

54. S&T’s bad faith and deception is evidenced in its Demand Letter’s treatment of this element of the claim. In S&T’s claim chart it states that Mason’s customers are notified

“when the shipment is picked up”, and asserts that this notification infringes a claim requiring notification “during the travel” of the vehicle. The two cannot possibly occur at the same time—the package cannot be picked up by the vehicle at the same time it is traveling. Even S&T’s own statements demonstrate that it is aware that Mason does not infringe.

55. Claim 41 of the ’359 patent further requires 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.” Mason’s system does not allow the customer to define which events cause them to be notified. All customers are notified when their package ships.

56. Because the only notification Mason provides to the customer, the initial shipping notification, does not perform the claimed steps, Mason cannot infringe any claim of the ’359 patent.

57. To the extent S&T is alleging infringement based on tracking information made available to the customer beyond this point, such information is not provided by Mason and Mason therefore cannot be liable. Mason ships its products using the services of the United States Postal Service, FedEx, and UPS. When Mason sends a shipping notification to a customer, it includes a link to the shipper’s website where a customer can obtain additional information regarding the status of their package. This information is not gathered, presented, provided, or verified by Mason—Mason merely tells the customer where they can go on the internet to find it. As a result, any alleged infringement based on this information is not attributable to Mason.

58. The claims of the ’359 patent are invalid for at least the same reasons as discussed above in reference to the ’970 patent.

E. The '299 Patent

59. S&T claims to own the '299 patent, which is entitled "Notification systems and methods with notifications based upon prior stop locations." This patent expired on March 18, 2013. S&T may therefore only seek damages for actions taking place on or before March 18, 2013, and may not seek damages for any alleged current or future infringement. Notably, S&T's demand letter does not claim that any of the alleged acts of infringement took place prior to such a date. Moreover, S&T failed to comply with the marking requirements of 35 U.S.C. § 287 and did not provide actual notice of alleged infringement until 2016. Therefore, S&T is not entitled to damages for any alleged past infringement of this patent.

60. S&T alleges that Mason infringes claim 79 of the '299 patent. Mason does not infringe this, or any other claim of the '299 patent because its shipping notification does not meet all of the limitations of any given claim. Illustrative, but non-exhaustive examples include the following:

61. Claim 79 states:

79. 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.

62. Like the claims of the other patents in suit, this is a means-plus-function claim and is therefore defined by the specification. Mason cannot infringe this claim because it requires “monitoring travel data,” “determining a subsequent stop location,” and communicating with the customer “of the impending arrival” of the vehicle at the delivery address. The specification makes clear that this requires real-time tracking. Mason’s customer notification system does not and cannot do this, and S&T has no good faith basis to assert that it can.

63. In S&T’s Demand Letter, despite listing the “notify the party of the impending arrival at the subsequent stop location” limitation, and an assertion that Mason infringes the entire claim, S&T does not even allege that Mason’s system notifies anyone of impending arrival. S&T’s claim chart misleadingly notes that Mason’s system informs the customer “of the pickup” and of the “delivery address,” but does not mention any notification of “impending arrival.” Because Mason’s customer notification system only provides the customer with a notification that the package has shipped, and not any of the other information required by this claim, it cannot infringe.

64. To the extent S&T is alleging infringement based on tracking information made available to the customer beyond this point, such information is not provided by Mason and Mason therefore cannot be liable for the reasons described above.

65. The claims of the ’299 patent are invalid for at least the same reasons as discussed above in reference to the ’970 patent.

COUNT 1 – DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE ’970 PATENT

66. Mason incorporates all previous allegations by reference.

67. This Court has subject matter jurisdiction over this count under 28 U.S.C. §§ 1331, 1338, and 2201 because a present, genuine, actual, and justiciable controversy exists under

28 U.S.C. §§ 2201 and 2202 and the patent laws, 35 U.S.C. § 1 *et seq.*, between Mason and S&T regarding Mason's alleged infringement of the '970 patent.

68. Mason's business operations, including its shipping notices, shipping confirmation emails, and updates on customer orders, do not and will not infringe the '970 patent.

69. Accordingly, Mason is entitled to a declaratory judgment that it has not infringed, induced others to infringe, or contributed to the infringement of the '970 patent.

70. In the alternative, Mason is entitled to a declaratory judgment that S&T is not entitled to damages in connection with the '970 patent, which expired on May 18, 2013, because S&T failed to comply with the marking requirements of 35 U.S.C § 287 and did not provide actual notice of alleged infringement until 2016.

COUNT 2 – DECLARATORY JUDGMENT OF INVALIDITY OF THE '970 PATENT

71. Mason incorporates all previous allegations by reference.

72. This Court has subject matter jurisdiction over this count under 28 U.S.C. §§ 1331, 1338, and 2201 because a present, genuine, actual, and justiciable controversy exists under 28 U.S.C. §§ 2201 and 2202 and the patent laws, 35 U.S.C. § 1 *et seq.*, between Mason and S&T regarding the validity of the '970 patent.

73. The '970 patent is invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112 for at least the reasons described above.

74. Accordingly, Mason is entitled to a declaratory judgment that all claims of the '970 patent are invalid.

COUNT 3 – DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '207 PATENT

75. Mason incorporates all previous allegations by reference.

76. This Court has subject matter jurisdiction over this count under 28 U.S.C. § 1331, 1338, and 2201 because a present, genuine, actual, and justiciable controversy exists under 28 U.S.C. §§ 2201 and 2202 and the patent laws, 35 U.S.C. § 1 *et seq.*, between Mason and S&T regarding Mason's alleged infringement of the '207 patent.

77. Mason's business operations, including its shipping notices, shipping confirmation emails, and updates on customer orders, do not and will not infringe the '207 patent.

78. Accordingly, Mason is entitled to a declaratory judgment that it has not infringed, induced others to infringe, or contributed to the infringement of the '207 patent.

COUNT 4 – DECLARATORY JUDGMENT OF INVALIDITY OF THE '207 PATENT

79. Mason incorporates all previous allegations by reference.

80. This Court has subject matter jurisdiction over this count under 28 U.S.C. §§ 1331, 1338, and 2201 because a present, genuine, actual, and justiciable controversy exists under 28 U.S.C. §§ 2201 and 2202 and the patent laws, 35 U.S.C. § 1 *et seq.*, between Mason and S&T regarding the validity of the '207 patent.

81. The '207 patent is invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112 for at least the reasons described above.

82. Accordingly, Mason is entitled to a declaratory judgment that all claims of the '207 patent are invalid.

COUNT 5 – DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '359 PATENT

83. Mason incorporates all previous allegations by reference.

84. This Court has subject matter jurisdiction over this count under 28 U.S.C. §§ 1331, 1338, and 2201 because a present, genuine, actual, and justiciable controversy exists under

28 U.S.C. §§ 2201 and 2202 and the patent laws, 35 U.S.C. § 1 *et seq.*, between Mason and S&T regarding Mason's alleged infringement of the '359 patent.

85. Mason's business operations, including its shipping notices, shipping confirmation emails, and updates on customer orders, do not and will not infringe the '359 patent.

86. Accordingly, Mason is entitled to a declaratory judgment that it has not infringed, induced others to infringe, or contributed to the infringement of the '359 patent.

87. In the alternative, Mason is entitled to a declaratory judgment that S&T is not entitled to damages in connection with the '359 patent, which expired on May 18, 2013, because S&T failed to comply with the marking requirements of 35 U.S.C § 287 and did not provide actual notice of alleged infringement until 2016.

COUNT 6 – DECLARATORY JUDGMENT OF INVALIDITY OF THE '359 PATENT

88. Mason incorporates all previous allegations by reference.

89. This Court has subject matter jurisdiction over this count under 28 U.S.C. §§ 1331, 1338, and 2201 because a present, genuine, actual, and justiciable controversy exists under 28 U.S.C. §§ 2201 and 2202 and the patent laws, 35 U.S.C. § 1 *et seq.*, between Mason and S&T regarding the validity of the '359 patent.

90. The '359 patent is invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112 for at least the reasons described above.

91. Accordingly, Mason is entitled to a declaratory judgment that all claims of the '359 patent are invalid.

COUNT 7 – DECLARATORY JUDGMENT OF NONINFRINGEMENT OF THE '299 PATENT

92. Mason incorporates all previous allegations by reference.

93. This Court has subject matter jurisdiction over this count under 28 U.S.C. §§ 1331, 1338, and 2201 because a present, genuine, actual, and justiciable controversy exists under 28 U.S.C. §§ 2201 and 2202 and the patent laws, 35 U.S.C. § 1 *et seq.*, between Mason and S&T regarding Mason's alleged infringement of the '299 patent.

94. Mason's business operations, including its shipping notices, shipping confirmation emails, and updates on customer orders, do not and will not infringe the '299 patent.

95. Accordingly, Mason is entitled to a declaratory judgment that it has not infringed, induced others to infringe, or contributed to the infringement of the '299 patent.

96. In the alternative, Mason is entitled to a declaratory judgment that S&T is not entitled to damages in connection with the '299 patent, which expired on March 18, 2013, because S&T failed to comply with the marking requirements of 35 U.S.C § 287 and did not provide actual notice of alleged infringement until 2016.

COUNT 8 – DECLARATORY JUDGMENT OF INVALIDITY OF THE '299 PATENT

97. Mason incorporates all previous allegations by reference.

98. This Court has subject matter jurisdiction over this count under 28 U.S.C. §§ 1331, 1338, and 2201 because a present, genuine, actual, and justiciable controversy exists under 28 U.S.C. §§ 2201 and 2202 and the patent laws, 35 U.S.C. § 1 *et seq.*, between Mason and S&T regarding the validity of the '299 patent.

99. The '299 patent is invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and/or 112 for at least the reasons described above.

100. Accordingly, Mason is entitled to a declaratory judgment that all claims of the '299 patent are invalid.

COUNT 9 – VIOLATION OF WISCONSIN STATUTE § 100.197(b)

101. Mason incorporates all previous allegations by reference.

102. This Court has supplemental jurisdiction over this count pursuant to 28 U.S.C. § 1367 because such claims are so related to the other counts of this Complaint that they form part of the same case or controversy under Article III of the United States Constitution.

103. On May 17, 2016 S&T sent a “patent notification” within the meaning of that phrase under Wisconsin Statute § 100.197(1)(a) to Mason in the state of Wisconsin.

104. Mason was the “target” of the patent notification within the meaning of that phrase under Wisconsin Statute §100.197(1)(b).

105. The patent notification contains misleading, deceptive, and false information relating to Mason’s alleged infringement of the ’299, ’359, ’207, and/or ’970 patents.

106. Accordingly, Mason is entitled to a judgment that S&T violated Wisconsin Statute §100.197(2)(b).

107. Accordingly, Mason is entitled to a judgment of costs and damages pursuant to §§100.197(3)(b)(2) and (3)(b)(3).

108. Mason is also entitled to an award of punitive damages in the amount of \$50,000 for each misleading statement contained within its patent notification, pursuant to Wisconsin Statute §100.197(3)(b)(4).

COUNT 10 – VIOLATION OF 18 U.S.C. § 1962 (RICO)

109. Mason incorporates all previous allegations by reference.

110. At all relevant times, Mason is a person within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

111. At all relevant times S&T is a person within the meaning of 18 U.S.C. §§ 1961(3) and 1962(c).

112. S&T conducts its enterprise with the purpose of filing frivolous patent infringement cases and extorting “licensing fees” and/or settlements from entities who do not actually infringe upon the patents at issue in the lawsuit.

113. S&T, and its predecessors have a history of filing over 500 patent infringement lawsuits over the last decade, most of such acts involving bad faith attempts to compel the accused defendants to pay a substantial amount of money for an unnecessary license to one or more patents to avoid the significant cost of defending against a frivolous patent infringement lawsuit.

114. Upon information and belief, S&T and its predecessor entities have profited from such business practices.

115. At all relevant times, S&T was engaged in, and its activities affected, interstate commerce within the meaning of 18 U.S.C. § 1962(c).

116. S&T conducted its affairs through a “pattern of racketeering activity” within the meaning of 18 U.S.C. § 1961(5) and in violation of 18 U.S.C. § 1962.

117. S&T has conducted the affairs of its business through numerous acts of extortion and attempted extortion in violation of 18 U.S.C. § 1951, which constitute “predicate acts” under 18 U.S.C. § 1961 in furtherance of its business model of obtaining financial gain through frivolous and bad faith lawsuits built upon misleading and factually inaccurate patent notifications in an effort to extort licensing fees.

118. S&T has threatened to use litigation and the resources of the U.S. Courts with the intent to disrupt Mason’s business and extract a licensing fee from Mason when it knows, or

should have known, that Mason is not infringing any of the patents at issue. This is evidenced by the misleading nature of the provided claim chart and assertions of infringement, which attempt to imply that infringement is possible, when it is clear that none exists.

119. As such, under 18 U.S.C. § 1962(c), Mason is entitled to treble damages and attorneys' fees as a result of such acts.

PRAYER FOR RELIEF

Wherefore, Mason requests that judgment be entered in its favor and against S&T as follows:

- A. Declaring that Mason has not, and will not, infringe the '207 patent.
- B. Declaring that the '207 patent is invalid.
- C. Declaring that Mason has not infringed the '299 patent.
- D. Declaring that S&T is not entitled to damages in connection with the '299 patent.
- E. Declaring that the '299 patent is invalid.
- F. Declaring that Mason has not infringed the '970 patent.
- G. Declaring that S&T is not entitled to damages in connection with the '970 patent.
- H. Declaring that the '970 patent is invalid.
- I. Declaring that Mason has not infringed the '359 patent.
- J. Declaring that S&T is not entitled to damages in connection with the '359 patent.
- K. Declaring that the '359 patent is invalid.
- L. Declaring that S&T has violated Wisconsin Statute § 100.197(2)(b).
- M. An award of costs and damages pursuant to Wisconsin Statute § 100.197(3)(b)(2) and §100.197(3)(b)(3).

N. An award of \$50,000 for each violation of Wisconsin Statute §100.197(2)(b) contained within the Demand Letter pursuant to Wisconsin Statute §100.197(3)(b)(4).

O. Declaring that Mason is entitled to its fees and costs in this action pursuant to 35 U.S.C. and any other applicable statute, and awarding such fees and costs.

P. Declaring that S&T is in violation of 18 U.S.C. § 1962.

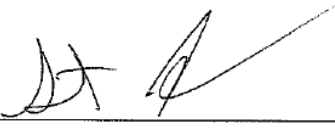
Q. Declaring that Mason is entitled to a trebling of all damages, pursuant to 18 U.S.C. § 1964(c); and

R. Awarding such other relief as deemed appropriate.

JURY DEMAND

Mason demands a trial by jury on all issues so triable.

Dated: June 13, 2016

By: 
Stephen R. Howe, Esq.
Jeffrey S. Ward, Esq.
Merchant & Gould P.C.
10 E. Doty Street, Suite 600
Madison, WI 53703-3376
Telephone: (608) 280-6750
Facsimile: (612) 332-9081
showe@merchantgould.com
jward@merchantgould.com

Rachel K. Zimmerman
Merchant & Gould P.C.
3200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: (612) 332-5300
Facsimile: (612) 332-9081
rscobie@merchantgould.com

Attorneys for Mason Companies, Inc.