

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

InVue Security Products Inc.,)	
)	
Plaintiff,)	
)	
v.)	
)	Civil Action No.:
Mobile Tech, Inc. d/b/a Mobile Technologies Inc.)	
and MTI, formerly known as Merchandising)	
Technologies Inc.,)	COMPLAINT
)	Jury Trial Demanded
Defendant.)	
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COMPLAINT

Plaintiff InVue Security Products Inc. (“Plaintiff” or “InVue”) files this Complaint for patent infringement against Defendant Mobile Tech, Inc. (“Defendant” or “MTI”) and alleges as follows:

1. InVue brings this action pursuant to the United States Patent Act, 35 U.S.C. § 100, *et seq.* MTI has infringed and continues to infringe one or more claims of U.S. Patent No. 9,396,631 (“ ‘631 patent” or “patent-in-suit”). The patent-in-suit is entitled “Programmable Security System and Method for Protecting Merchandise.”

2. The patent-in-suit claims priority through United States Application No. 14/931,276, filed on November 3, 2015, which is a continuation of United States Application No. 14/825,436, filed on August 13, 2015, and now United States Patent No. 9,269,247, which is a continuation of United States Application No. 14/529,516, filed on October 31, 2014, and now United States Patent No. 9,135,800, which is a continuation of United States Application No. 14/254,244, filed on April 16, 2014, and now United States Patent No. 8,884,762, which is a

continuation of United States Application No. 13/169,968, filed on June 27, 2011, and now abandoned, which is a continuation-in-part of United States Application No. 12/770,321, filed on April 29, 2010, and now United States Patent No. 7,969,305, which is a continuation of United States Application No. 11/639,102, filed on December 14, 2006, and now United States Patent No. 7,737,846, which claims the benefit of United States Provisional Application No. 60/753,908, filed on December 23, 2005.

3. MTI has committed, and continues to commit, acts of direct infringement, contributory infringement, and inducement infringement of one or more claims of the patent-in-suit.

The Parties

4. InVue is a corporation formed under the laws of Ohio with a principal place of business at 15015 Lancaster Hwy, Charlotte, NC 28277.

5. MTI is a corporation formed under the laws of Indiana with a principal place of business at 1050 NW 229th Avenue, Hillsboro, Oregon 97124.

Jurisdiction

6. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the United States Patent Act, 35 U.S.C. § 100, *et seq.*

7. Upon information and belief, pursuant to the U.S. Constitution and N.C. Gen. Stat. Ann. 1-75.4, this Court has personal jurisdiction over MTI because MTI has transacted business within the State of North Carolina, has contracted to supply goods in the State of North Carolina, has engaged in infringing acts in the State of North Carolina, and has engaged in acts outside of the State of North Carolina causing injury or damage within the State of North Carolina, including in the Western District of North Carolina.

8. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1391(b) and 1400 because InVue has its principal place of business in this district, MTI has committed acts of infringement in this district, and MTI is subject to personal jurisdiction here.

Patent-in-Suit

9. On July 19, 2016, the United States Patent and Trademark Office duly and legally issued the '631 patent, entitled "Programmable Security System and Method for Protecting Merchandise." True and accurate copies of the Issue Notification for the '631 patent and allowed claims of the '631 patent are attached as Exhibit A.¹

10. The patent-in-suit describes an invention that advanced the art and relates to methods of protecting merchandise and programmable security systems that can include in certain embodiments, for example, one or more of a logic control circuit configured to provide a unique security code, a programmable key having a memory configured to store the unique security code, and a security device that includes an alarm and a memory for storing the unique security code, with the security device configured for attachment to merchandise and to activate an alarm in response to the integrity of the security device being compromised. The programmable key can be configured to control the security device upon a matching of the unique security code in the memory of the security device with the unique security code stored in the memory of the key. Various embodiments with additional or different features are also described.

11. InVue is the owner of all rights, title, and interest in the patent-in-suit including the right to bring this suit for injunctive relief and damages.

¹ The '631 patent issued on July 19, 2016, just before this Complaint was filed. InVue will supplement Exhibit A with a true and accurate copy of the '631 patent as issued.

12. InVue has not authorized MTI or its customers to manufacture, offer to sell, sell, use, or import any product or method covered by the patent-in-suit.

13. InVue has complied with the marking requirements of 35 U.S.C. § 287 for the patent-in-suit.

Defendant's Infringing Activities

14. Upon information and belief, MTI has infringed, and continues to infringe, the patent-in-suit by making, using, offering for sale, selling, and/or importing products, namely security systems, that practice the invention of the patent-in-suit (hereinafter the "Accused Products") and by inducing its customers to use the Accused Products.

15. The Accused Products include, by way of example and not limitation, programmable security systems having one or more of a logic control circuit that provides a unique security code, a programmable key having a memory for storing the unique security code, a security device that has an alarm and a memory for storing the unique security code, where the security device can be attached to merchandise and can activate an alarm in response to the integrity of the security device being compromised, and where the programmable key controls the security device upon a matching of the unique security code stored in the memory of the security device with the unique security code stored in the memory of the programmable key.

16. MTI has used various names for the Accused Products as well as components of the Accused Products including, without limitation, devices and components MTI refers to as the "Freedom Micro", "Freedom Micro DI", "Intellikey Gen 2", "Gen2 Intellikey Starter Kit", "Intellikey Gen 2", "Multiple Code Processor", "MCP", "Freedom LP4", "LP4", "Intelligent Switch Module", "ISM", such other security devices and components that function in a similar manner and operate with an Intellikey and MCP, such others operating as described above in preceding Paragraph 15, and as may be further identified during this action.

17. MTI's customers use the Accused Products in the U.S. including, for example, use by one or more retailers in the State of North Carolina.

18. The Accused Products and use of the Accused Products by MTI and MTI's customers embodies and practices the invention claimed in the patent-in-suit.

19. MTI has constructive knowledge of the patent-in-suit at least through InVue's compliance with the marking requirements of 35 U.S.C. § 287 for the patent-in-suit.

20. MTI has had actual knowledge of the '631 patent since at least the date on which MTI received the Complaint in this action.

COUNT 1

First Cause of Action: Direct Infringement of U.S. Patent No. 9,396,631

21. InVue incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

22. MTI's manufacture, offer for sale, sale, importation, and/or use of the Accused Products in the United States directly infringes the '631 patent.

23. MTI's manufacture, offer for sale, sale, importation, and/or use of the Accused Products infringes, for example, at least claim 1 of the '631 patent.

24. One or more of the Accused Products, for example, includes a programmable security system that protects items of merchandise from theft. This programmable security system includes a logic control circuit (part of e.g., a device referred to sometimes by MTI as a "Multiple Code Processor" or "MCP") that generates a unique security code that is unique to the logic control circuit.

25. Such programmable security system also includes one or more programmable keys (referred to sometimes by MTI as "Intellikeys") that have a memory in which to store the unique security code.

26. Such programmable security system also includes one or more security devices (referred to sometimes by MTI as “pucks”) that each have an alarm and a memory for storing the unique security code. Each of the security devices can be attached to an item of merchandise and will activate an alarm if the integrity of the security device is compromised by, for example, tampering with the security device or removing the item of merchandise from the security device.

27. The programmable key of MTI’s programmable security system will control the security device upon a matching of the unique security code stored in the memory of the security device with the unique security code stored in the programmable key.

28. MTI’s direct infringement of the ’631 patent causes financial damages to InVue, including for example, lost sales revenue caused by MTI’s sales of the Accused Products.

29. MTI’s direct infringement of the ’631 patent irreparably damages InVue, including for example, avoiding InVue’s right to exclude others from making, using, selling, or offering to sell products embodying the invention patented in the ’631 patent.

30. MTI’s direct infringement of the ’631 patent will continue unless enjoined by the Court under 35 U.S.C. § 283 and/or the equitable powers of the Court.

31. MTI has had actual knowledge of the ’631 patent since at least the date on which MTI received the Complaint in this action.

32. MTI’s direct infringement of the ’631 patent constitutes willful infringement because such continues to proceed despite an objectively high likelihood that its conduct infringes valid claims of the ’631 patent, and this likelihood is either known to MTI or so obvious that MTI should have known that its conduct infringed valid claims of the ’631 patent.

COUNT 2

Second Cause of Action: Contributory Infringement of U.S. Patent No. 9,396,631

33. InVue incorporates by reference the allegations of the preceding paragraphs as if fully set forth herein.

34. MTI has had actual knowledge of the '631 patent since at least the date on which MTI received the Complaint in this action.

35. Upon information and belief, MTI has had actual knowledge that the '631 patent would issue on July 19, 2016 because the application that resulted in the '631 patent and its file history in the United States Patent and Trademark Office (USPTO) were publicly available on the USPTO's Public Application Information Retrieval website beginning on February 25, 2016, the date of publication of the application, and the Issue Notification attached as Exhibit A, was publicly available on June 29, 2016. Because the '631 patent issued from an application that was a continuation of one or more applications, which include applications that are now United States Patent No. 9,269,247 (the '247 patent), United States Patent 9,135,800 (the '800 patent) and United States Patent 8,884,762 (the '762 patent), which are all asserted against MTI in Civil Action No. 3:15-cv-00610 currently pending in the U.S. District Court for the Western District of North Carolina, and because the written description and drawings of the '631 patent describe exemplary embodiments of the inventions also described in the '247 patent, the '800 patent, and the '762 patent, upon information and belief, MTI would have monitored the prosecution of the application that resulted in the '631 patent and been aware of its issuance on July 19, 2016.

36. The Accused Products are configured only for infringing use as programmable security systems protecting items of merchandise. For example, the Accused Products include one or more security devices that are configured only for purposes of attachment to an item of

merchandise to protect the item of merchandise from theft and are used with programmable keys and programming stations containing a logic control circuit configured for use with such security devices along with unique security codes.

37. The Accused Products are not staple articles of commerce.

38. The Accused Products are not suitable for substantial non-infringing use.

39. The Accused Products are especially made or especially adapted for use in an infringement of the '631 patent.

40. The use of the Accused Products by MTI's customers constitutes direct infringement of the '631 patent.

41. On information and belief, MTI knows that the Accused Products are not staple articles of commerce, are not suitable for substantial non-infringing use, and are especially made or adapted for use in a manner that infringes InVue's patent rights associated with the '631 patent.

42. MTI's actions constitute contributory infringement of the '631 patent.

43. MTI's contributory infringement of the '631 patent causes financial damages to InVue, including for example, lost sales revenue caused by MTI's sales of the Accused Products.

44. MTI's contributory infringement of the '631 patent irreparably damages InVue, including for example, avoiding InVue's right to exclude others from making, using, selling, or offering to sell products embodying the invention patented in the '631 patent.

45. MTI's contributory infringement of the '631 patent will continue unless enjoined by the Court under 35 U.S.C. § 283 and/or the equitable powers of the Court.

46. MTI's contributory infringement of the '631 patent is willful infringement because such continues to proceed despite an objectively high likelihood that its conduct

infringes valid claims of the '631 patent, and this likelihood is either known to MTI or so obvious that MTI should have known that its conduct infringed valid claims of the '631 patent.

COUNT 3

Third Cause of Action: Inducement Infringement of U.S. Patent No. 9,396,631

47. InVue incorporates by reference the allegations of paragraphs 1 through 20 and 21 through 32 as if fully set forth herein.

48. MTI has had actual knowledge of the '631 patent since at least the date on which MTI received service the Complaint in this action.

49. Upon information and belief, MTI has had actual knowledge that the '631 patent would issue on July 19, 2016 because the application that resulted in the '631 patent and its file history in the United States Patent and Trademark Office (USPTO) were publicly available on the USPTO's Public Application Information Retrieval website beginning on February 25, 2016, the date of publication of the application, and the Issue Notification attached as Exhibit A, was publicly available on June 29, 2016. Because the '631 patent issued from an application that was a continuation of one or more applications, which include applications that are now United States Patent No. 9,269,247 (the '247 patent), United States Patent 9,135,800 (the '800 patent) and United States Patent 8,884,762 (the '762 patent), which are all asserted against MTI in Civil Action No. 3:15-cv-00610 currently pending in the U.S. District Court for the Western District of North Carolina, and because the written description and drawings of the '631 patent describe exemplary embodiments of the inventions also described in the '247 patent, the '800 patent, and the '762 patent, upon information and belief, MTI would have monitored the prosecution of the application that resulted in the '631 patent and been aware of its issuance on July 19, 2016.

50. MTI sells and continues to sell the Accused Products to its customers with the intent that its customers will use and operate the Accused Products in the United States in a manner that infringes the '631 patent.

51. MTI provides its customers with instructions regarding the infringing use and operation of the Accused Products in the United States.

52. Upon information and belief, MTI trains its customers in the infringing use and operation of the Accused Products in the United States.

53. Upon information and belief, MTI has observed its customers using and operating the Accused Products in the United States in an infringing manner.

54. Upon information and belief, MTI is aware or should have known that use and operation of the Accused Products in the United States by MTI or its customers would directly infringe the '631 patent.

55. MTI's actions to aid and abet its customers to directly infringe the '631 patent with knowledge that use of the Accused Products in the United States would directly infringe the '631 patent constitutes inducement infringement.

56. MTI's inducement infringement of the '631 patent causes financial damages to InVue, including for example, lost sales revenue caused by MTI's sales of the Accused Products.

57. MTI's inducement infringement of the '631 patent irreparably damages InVue, including for example, avoiding InVue's right to exclude others from making, using, selling, or offering to sell products embodying the invention patented in the '631 patent.

58. MTI's inducement infringement of the '631 patent will continue unless enjoined by the Court under 35 U.S.C. § 283 and/or the equitable powers of the Court.

59. MTI's inducement infringement of the '631 patent is willful infringement because such continues to proceed despite an objectively high likelihood that its conduct infringes valid claims of the '631 patent, and this likelihood is either known to MTI or so obvious that MTI should have known that its conduct infringed valid claims of the '631 patent.

Request for Relief

Wherefore, InVue respectfully requests the entry of judgment against Defendant MTI and its subsidiaries, successors, parents, affiliates, officers, directors, agents, servants, employees, and all persons in active concert or participation, providing the following relief:

A. Finding that Defendant MTI has directly infringed, either literally or by doctrine of equivalents, has committed contributory infringement, and/or has committed inducement infringement of one or more claims of the patent-in-suit and finding that such infringement has been willful;

B. Entering a permanent injunction, under 35 U.S.C. § 283 and the equitable powers of the Court, against Defendant MTI and all those in active concert or participation with Defendant MTI, to prevent further direct and/or indirect infringement of the patent-in-suit;

C. Awarding Plaintiff InVue damages in an amount that will be proved at trial and that will adequately compensate Plaintiff InVue for the infringement but in no amount less than a reasonable royalty as authorized by 35 U.S.C. § 284;

D. Increasing the damages awarded to Plaintiff InVue up to three times the amount of Plaintiff's actual damages as authorized by 35 U.S.C. § 284;

E. Finding that this is an exceptional case and award Plaintiff InVue its attorneys' fees and other expenses of litigation pursuant to 35 U.S.C. § 285 and/or other applicable laws;

F. Awarding Plaintiff InVue prejudgment interest and costs under 35 U.S.C. § 284 and/or other applicable laws; and

G. Granting such other legal and equitable relief and the Court may deem just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all issues triable to a jury.

This the 19th day of July, 2016.

Respectfully submitted,

s/ J. Mark Wilson

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