

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

ADVAULT, INC.

Plaintiff,

v.

HOMEWARD HEALTH LLC

Defendant.

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Civil Action No.: 3:16-cv-3120

**COMPLAINT FOR DECLARATORY JUDGMENT
REGARDING PATENT NON-INFRINGEMENT**

COMES NOW Plaintiff ADVault, Inc. (“ADVault”), by and through its undersigned counsel of record, and by way of complaint for declaratory judgment regarding non-infringement of U.S. Patent No. 8,830,830 against Defendant Homeward Health LLC d/b/a Wellopp (“Homeward”), hereby alleges and avers as follows:

NATURE OF THE ACTION

1. This is an action brought pursuant to the Declaratory Judgment Act, 28 U.S.C. §§2201-2202, for a declaratory judgment of non-infringement of United States Patent No. 8,830,830 (“the ‘830 patent”) under the Patent Laws of the United States, 35 U.S.C. §§101, *et seq.*

PARTIES

2. ADVault is a corporation organized under the laws of the state of Texas with its principal place of business located at 800 E. Campbell Rd., Ste. 320, Richardson, Texas 75081.
3. Homeward is the owner by assignment of the ‘830 patent and is a limited liability company organized under the laws of the state of Ohio with its principal place of business located at 2865 N. Reynolds Rd., Ste., 220C, Toledo, Ohio 43615.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338(a).
5. Upon information and belief, this Court has personal jurisdiction over Homeward because Homeward has constitutionally sufficient contacts with Texas so as to make personal jurisdiction proper in this Court. In particular, upon information and belief, Homeward maintains a website that offers for sale products made by Homeward that are made available to residents of Texas and this judicial district, and has made sales into this judicial district.
6. Venue is proper in this district under 28 U.S.C. §§1391(b) and 1400.

FACTS AND ALLEGATIONS GIVING RISE TO THIS ACTION

7. Homeward has accused ADVault of infringing the '830 patent.
8. By virtue of Homeward's actions and statements, ADVault has a reasonable fear and apprehension that patent infringement litigation will be brought against it. Therefore, there currently exists an actual and justiciable controversy between ADVault and Homeward relating to the '830 patent.
9. Homeward's allegations of ADVault's infringement of the '830 patent place a cloud over ADVault's business and relationships with potential and current customers. In factm ADVault's activities do not infringe, either directly or indirectly, any claim of the '830 patent.
10. Under the circumstances, there exists a clear, substantial and continuing threat to ADVault's business as long as the current controversy remains unresolved. Accordingly,

ADVault needs and seeks resolution of the issues raised in this complaint for declaratory relief to lift the cloud over its business. On at least such basis, ADVault is entitled to declaratory relief.

11. ADVault denies that it now infringes or in the past has infringed, either directly, indirectly, literally, or under the doctrine of equivalents, any claim of the '830 patent.

FACTS RELATING TO NON-INFRINGEMENT

12. The '830 patent contains 17 claims and is entitled "Directed Medical Care System and Method."
13. Each of the 17 claims are to a method, which includes at least one step that neither ADVault, nor its users incorporates.
14. It is unquestionable that a patented method is not infringed unless all the steps are carried out.
15. Accordingly, ADVault seeks a declaratory judgment that it does not now infringe, nor in the past has infringed, any claim of the '830 patent.

FIRST CLAIM FOR RELIEF (Declaratory Judgment of Patent Non-Infringement)

16. ADVault re-alleges and incorporates by reference, as though fully incorporated herein, the allegations contained in paragraphs 1-15, inclusive.
17. Neither ADVault, nor its activities, infringe any claim of the '830 patent.
18. ADVault is entitled to a declaratory judgment by the Court that it, and its activities, have not and do not infringe any claims of the '830 patent.

PRAYER FOR RELIEF

WHEREFORE, ADVault prays for entry of judgment, as follows:

1. That judgment be entered in favor of ADVault on all claims for relief raised in the Complaint;
2. For a declaratory judgment by the Court that ADVault, and its activities, have not infringed and do not infringe any claims of the '830 patent;
3. For a declaration, as warranted, that this is an exceptional case under 35 U.S.C. §285;
4. For an award to ADVault of its attorneys' fees and expenses in this action;
5. That judgment and order be entered awarding to ADVault all other relief to which ADVault may prove itself to be entitled; and
6. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.

DATED THIS 8th day of November, 2016.

/s Robert M. Mason
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