

1 Manatt, Phelps & Phillips, LLP
YURI MIKULKA (SBN 185926)
2 E-mail: YMikulka@manatt.com
CALEB BEAN (SBN 299751)
3 E-mail: CBean@manatt.com
695 Town Center Drive, 14th Floor
4 Costa Mesa, CA 92626-1924
Telephone: (714) 371-2500
5 Facsimile: (714) 371-2550

6 Attorneys for Plaintiff
HORIZON TECHNOLOGY, LLC
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION
11

12 HORIZON TECHNOLOGY, LLC,
d/b/a FreightPOP,
13 a California limited liability company,

14 Plaintiff,

15 vs.

16 SHIPPING AND TRANSIT, LLC,
a Florida limited liability company,

17 Defendant.
18

No. 2:17-CV-00531

COMPLAINT FOR (1)
DECLARATORY JUDGMENT OF
INVALIDITY AND (2)
DECLARATORY JUDGMENT OF
NON-INFRINGEMENT

JURY TRIAL DEMANDED

Date of Filing: January 23, 2017

1 Plaintiff Horizon Technology, LLC, d/b/a FreightPOP (“Plaintiff” or
2 “FreightPOP”), by and through its counsel, brings this Complaint for Declaratory
3 Judgment of Invalidity and Declaratory Judgment of Non-Infringement against
4 Defendant Shipping and Transit, LLC (“STL”), as follows:

5 **INTRODUCTION**

6 1. This is an action for declaratory judgment that the following United
7 States Patents are invalid and not infringed by Plaintiff FreightPOP, either directly
8 or as an inducing or contributory infringer: U.S. Patent No. 6,317,060 (“the ‘060
9 Patent”) and U.S. Patent No. 6,415,207 (“the ‘207 Patent”) (collectively, the
10 “Patents-in-Suit”).

11 2. Furthermore, Defendant STL, under its current and former names, has
12 filed over 500 lawsuits related to patents it claims to own, including over 100
13 lawsuits in 2016.

14 3. Given the demand letter sent by STL to FreightPOP, as well as all
15 other allegations in this Complaint, including specifically STL’s practice of
16 regularly filing numerous lawsuits, there exists a concrete and immediate justiciable
17 controversy between FreightPOP and STL.

18 **THE PARTIES**

19 4. Plaintiff FreightPOP is a California limited liability company having
20 an address and principal place of business at 1 Rancho Circle, Lake Forest,
21 California 92630.

22 5. Upon information and belief, Defendant STL is a Florida limited
23 liability company having an address and principal place of business at 711
24 Southwest 24th Avenue, Boynton Beach, Florida.

25 6. STL was formerly known as ArrivalStar S.A. and Melvino
26 Technologies Limited.

JURISDICTION AND VENUE

1
2 7. Plaintiff incorporates each of the allegations of paragraphs 1 through 6
3 above, as if fully set forth herein.

4 8. This Court has jurisdiction over the subject matter of this action
5 pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202, at least because this action
6 arises under the Patent Act (35 U.S.C. §§ 101 et seq.) and seeks relief under the
7 Federal Declaratory Judgment Act (28 U.S.C. § 2201 et seq.).

8 9. Upon information and belief, STL’s sole business operations consist of
9 using actual or threatened patent litigation to coerce businesses to license its patent
10 portfolio. On November 10, 2016, STL sent a demand letter to FreightPOP (“the
11 Demand Letter”) alleging that FreightPOP infringes “claims within claim 20 [*sic*]
12 of the ‘606 [*sic*], claim 5 of the ‘207 patents.” A true and correct copy of the
13 Demand Letter, the ‘060 Patent, and the ‘207 Patent are attached hereto as Exhibits
14 A through C, respectively. The Demand Letter demands that FreightPOP license
15 the ‘060 Patent and the ‘207 Patent.

16 10. Upon information and belief, STL also purposely availed itself of
17 privileges and benefits of the laws of the State of California, and otherwise
18 conducted business in California, including at least licensing its patent portfolio to
19 companies residing in California. Upon information and belief, STL’s patent
20 licensing and business activities in California constitute continuous and systematic
21 contacts with California. Upon information and belief, based on its hundreds of
22 cases and likely hundreds or thousands more demand letters, STL and its related
23 entities and predecessors have entered into licensing agreements and/or settled its
24 demands with multiple California companies. STL has also filed numerous
25 lawsuits in California alleging infringement of one or more of the Patents-in-Suit.
26 STL is therefore subject to specific and general personal jurisdiction in this Court.

27 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) and
28 (c).

1 **BACKGROUND**

2 **I. FreightPOP’s Business Practices**

3 12. Plaintiff FreightPOP has transportation management systems (“TMS”)
4 that provides services related to carrier rate comparison, processing labels,
5 document printing, centralized tracking, freight invoice auditing, and order
6 inventory systems.

7 13. FreightPOP’s shipping solution is designed as a software solution that
8 aggregates information from various shipping carriers and is designed to provide
9 the aggregated information to customers.

10 14. Given that this is a newly launched solution, FreightPOP has not sold
11 or licensed its FreightPOP shipping solution to anyone.

12 15. FreightPOP’s shipping solution is designed, among other things, to use
13 a shipping carrier’s code and a customer’s credentials to retrieve information from
14 the carrier’s servers.

15 16. FreightPOP’s shipping solution is not designed, among other things, to
16 include GPS tracking of the vehicles or the packages on or within the vehicles.
17 FreightPOP’s shipping solution is also not designed to predict the timing of an
18 event. FreightPOP’s shipping solution is also not designed to use an email address
19 as caller identification information.

20 **II. STL’s Business Practices**

21 17. Upon information and belief, Defendant STL is the successor-in-
22 interest to ArrivalStar S.A. and Melvino Technologies Limited, which are
23 themselves formerly known as ArrivalStar Inc.

24 18. Specifically, STL claims it is formerly known as ArrivalStar S.A. and
25 Melvino Technologies Limited.

26 19. Upon information and belief, STL’s current members, Peter Sirianni
27 and Martin Kelly Jones, were associated with ArrivalStar S.A. and Melvino
28

1 Technologies Limited.

2 20. ArrivalStar S.A., Melvino Technologies Limited, and STL have
3 collectively alleged infringement of one or more of the Patents-in-Suit in nearly two
4 hundred lawsuits against a myriad of defendants across the United States. Upon
5 information and belief, ArrivalStar S.A., Melvino Technologies Limited, and/or
6 STL have sent demand letters to thousands of additional parties regarding the
7 Patents-in-Suit and have obtained numerous licensing agreements without filing
8 lawsuits.

9 21. Upon information and belief, STL makes no products and sells no
10 services, and STL's sole business is to enforce the Patents-in-Suit and other patents
11 it owns and/or controls.

12 **III. The Demand Letter and STL's Failure to Investigate Infringement**

13 22. On November 10, 2016, STL sent FreightPOP the Demand Letter
14 alleging that FreightPOP infringes "claims within claim 20 [*sic*] of the '606 [*sic*],
15 claim 5 of the '207 patents." Ex. A at p. 2. However, in the claim chart found
16 within the Demand Letter, STL alleges infringement of claim 19 of the '060 Patent
17 (not the "'606" patent) and claims 5 and 7 of the '207 Patent (adding claim 7).

18 23. STL's pattern and practice of asserting patents against entities that do
19 not practice the patented technology to obtain nuisance value settlements is evident
20 in the Demand Letter sent to FreightPOP accusing its shipping solution of
21 infringement.

22 24. The Demand Letter seeks a license fee in the amount of \$30,000 for
23 the '060 Patent and the '207 Patent. Ex. A at p. 12.

24 25. On December 21, 2016, FreightPOP sent an email to STL to seek
25 clarity regarding STL's allegations of infringement and diligence and investigation
26 of FreightPOP's shipping solution. FreightPOP also requested clarity regarding
27 which claims are allegedly being infringed, given the inconsistencies within the
28 Demand Letter.

1 26. On December 22, 2016, STL responded to FreightPOP's email by
2 clarifying that the asserted claims include claim 19 (not claim 20) of the '060
3 Patent. STL, however, failed to identify what information it reviewed to conclude
4 that FreightPOP's shipping solution infringes the Patents-in-Suit. STL also refused
5 to explain its infringement analysis or how it calculated the requested licensing fee.
6 A true and correct copy of STL's response dated December 22, 2016 is attached
7 hereto as Exhibit D.

8 27. During a follow up discussion regarding its Demand Letter, STL's
9 representative Edward Turnbull stated that his role was limited to negotiating a
10 licensing fee and that he did not know what investigation efforts were undertaken
11 by STL to evaluate FreightPOP's shipping solution before sending the Demand
12 Letter.

13 28. Indeed, STL could not have performed a reasonable investigation prior
14 to sending the Demand Letter because publicly available information regarding
15 FreightPOP's shipping solution does not provide details of its operation and
16 Plaintiff has not sold its solution to anyone. Therefore, STL failed to perform a
17 reasonable investigation prior to asserting that FreightPOP's shipping solution
18 infringes the '060 Patent and the '207 Patent.

19 29. A reasonable investigation would have made it clear that FreightPOP's
20 shipping solution does not practice each and every claim limitation of the asserted
21 claims.

22 30. FreightPOP's shipping solution does not notify users of impending
23 arrivals of vehicles.

24 31. FreightPOP's shipping solution does not store data associated with a
25 plurality of vehicles. The shipping solution does not include GPS tracking of the
26 vehicles or the packages on or within the vehicles.

27 32. FreightPOP's shipping solution does not determine when a notification
28 event should occur. The shipping solution does not predict the timing of an event.

1 long prevalent in our system of commerce, rendering it patent ineligible. Nothing
2 in the claims, either individually or as an ordered combination, transforms the
3 nature of the claims into a patent-eligible invention. The mere recitation of a
4 generic computer cannot transform a patent-ineligible abstract idea into a patent-
5 eligible invention. Any additional elements recited in the claims of the '060 Patent
6 constitute merely insignificant post-solution activity.

7 39. The claims of the '060 Patent are invalid under 35 U.S.C. §§ 102 and
8 103 based on the disclosure of one or more of prior art references and obviousness.

9 40. STL's actions and assertions that the '060 Patent is valid and infringed
10 by FreightPOP have caused, and will continue to cause, irreparable injury to
11 FreightPOP. FreightPOP has no adequate remedy at law.

12 41. FreightPOP is entitled to a declaratory judgment that the claims of the
13 '060 Patent are invalid, and to such further relief as may be just and proper.

14 **SECOND CAUSE OF ACTION**

15 **Declaratory Judgment of Non-Infringement of**

16 **United States Patent No. 6,317,060**

17 42. Plaintiff incorporates each of the allegations of paragraphs 1 through
18 41 above, as if fully set forth herein.

19 43. An actual and justiciable controversy exists between Plaintiff
20 FreightPOP and Defendant STL concerning non-infringement of the '060 Patent.

21 44. FreightPOP does not infringe and has not infringed any valid claim of
22 the '060 Patent as alleged by STL.

23 45. FreightPOP has not directly infringed, induced the infringement of, nor
24 has been a contributory infringer of, any valid claim of the '060 Patent.

25 46. Asserted independent claim 19 of the '060 Patent is not infringed by
26 FreightPOP at least because FreightPOP's systems do not include each and every
27 limitation of claim 19 of the '060 Patent.

28 47. STL's actions and assertions that FreightPOP is infringing the '060

1 Patent have caused, and will continue to cause, irreparable harm to FreightPOP.
2 FreightPOP therefore has no adequate remedy at law.

3 48. FreightPOP is entitled to a declaratory judgment that FreightPOP does
4 not directly or indirectly infringe any of the claims of the '060 Patent, and to such
5 further injunctive or other relief as may be just and proper.

6 **THIRD CAUSE OF ACTION**

7 **Declaratory Judgment of Invalidity of**

8 **United States Patent No. 6,415,207**

9 49. Plaintiff incorporates each of the allegations of paragraphs 1 through
10 48 above, as if fully set forth herein.

11 50. An actual and justiciable controversy exists between Plaintiff
12 FreightPOP and Defendant STL concerning the invalidity of the '207 Patent.

13 51. The '207 Patent is invalid for failure to comply with one of more of
14 the statutory provisions of patentability, or to otherwise satisfy the requirements set
15 forth in Title 35 of the United States Code. In particular, by way of example and
16 not of limitation, the claims of the '207 Patent are invalid for failing to satisfy the
17 requirements of 35 U.S.C. §§ 101, 102, 103, and 112 (all citations herein to 35
18 U.S.C. are to the version thereof in effect prior to implementation of the Leahy-
19 Smith America Invents Act ("AIA"), i.e., pre-AIA) and/or under the doctrine of
20 obviousness-type double patenting.

21 52. The claims of the '207 Patent do not constitute patentable subject
22 matter pursuant to 35 U.S.C. § 101 as interpreted by the Supreme Court in *Alice*
23 *Corp. v. CLS Bank Int'l*, 134 S. Ct. 2347 ("*Alice*").

24 53. The infringement allegations asserted against FreightPOP are directed
25 to an unpatentable abstract idea that is implemented by human beings using
26 computers or user communication devices. The '207 Patent purports to claim the
27 abstract idea of monitoring and reporting the status of vehicles. This idea is
28 nothing more than a fundamental economic practice, building block, or basic tool of

1 the pertinent (e.g., shipping) industry that has been long prevalent in our system of
2 commerce, rendering it patent ineligible. Nothing in the claims, either individually
3 or as an ordered combination, transforms the nature of the claims into a patent-
4 eligible invention. The mere recitation of a generic computer cannot transform a
5 patent-ineligible abstract idea into a patent-eligible invention. Any additional
6 elements recited in the claims of the '207 Patent constitute merely insignificant
7 post-solution activity.

8 54. The claims of the '207 Patent are invalid under 35 U.S.C. §§ 102 and
9 103 based on the disclosure of one or more of prior art references and obviousness.

10 55. STL's actions and assertions that the '207 Patent is valid and infringed
11 by FreightPOP have caused, and will continue to cause, irreparable injury to
12 FreightPOP. FreightPOP has no adequate remedy at law.

13 56. FreightPOP is entitled to a declaratory judgment that the claims of the
14 '207 Patent are invalid, and to such further relief as may be just and proper.

15 **FOURTH CAUSE OF ACTION**

16 **Declaratory Judgment for Non-Infringement of**

17 **United States Patent No. 6,415,207**

18 57. Plaintiff incorporates each of the allegations of paragraphs 1 through
19 56 above, as if fully set forth herein.

20 58. An actual and justiciable controversy exists between Plaintiff
21 FreightPOP and Defendant STL concerning non-infringement of the '207 Patent.

22 59. FreightPOP does not infringe and has not infringed any valid claim of
23 the '207 Patent as alleged by STL.

24 60. FreightPOP has not directly infringed, induced the infringement of, nor
25 has been a contributory infringer of, any valid claim of the '207 Patent.

26 61. Asserted claims 5 and 7 of the '207 Patent are not infringed by
27 FreightPOP at least because FreightPOP's systems do not include each and every
28 limitation of claims 5 and 7 of the '207 Patent.

1 F. FreightPOP be granted such other and further relief as this Court
2 deems just and proper.

3
4 Dated: January 23, 2017

MANATT, PHELPS & PHILLIPS, LLP

5
6 By: */Yuri Mikulka/*

7 Yuri Mikulka
8 Caleb Bean
9 Attorneys for Plaintiff
10 HORIZON TECHNOLOGY, LLC

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