

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

EBELING ASSOCIATES, INC.,

Plaintiff,

vs.

SHIPPING AND TRANSIT, LLC,

Defendant

Civil Action No. 1:17-CV-0066 (GTS/DJS)

**DEMAND FOR JURY TRIAL**

**COMPLAINT**

Plaintiff EBELING ASSOCIATES, INC. d/b/a EXEControl Global Solutions (herein “ExeControl”), by and through their attorneys, Lee Palmateer Law Office LLC, as and for their Complaint against Defendants, allege the following:

**THE PARTIES**

1. Plaintiff ExeControl is a corporation organized under the laws of the State of New York having a principal place of business at 9 Corporate Drive, Clifton Park, New York 12065.

2. Upon information and belief, Defendant Shipping and Transit, LLC (hereinafter “S&T”) is a Florida limited liability company having its principal place of business at 711 Southwest 24th Avenue, Boynton Beach, Florida 33435.

**JURISDICTION AND VENUE**

1. This action asserts claims for declaratory judgment of non-infringement, invalidity and unenforceability of four United States patents allegedly owned by S&T, namely U.S. Patent Nos. 6,415,207 (the “207 patent”), 6,763,299 (the “299 patent”), 6,904,359 (the “359 patent”), and 7,400,970 (the “970 patent”).

2. Jurisdiction of these claims arises under the Federal Declaratory Judgments Act, Title 28, United States Code, Section 2201 and 2202, and under the laws of the United States concerning actions relating to Patents, Title 28, United States Code, Section 1338(a).

3. This Court has subject matter jurisdiction over this action under federal question jurisdiction pursuant to 28 U.S.C. § 1331.

4. Venue is based upon 28 U.S.C. §§ 1391(b)(2).

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM**

(Declaratory Judgment)

5. On or about December 2, 2016, Defendant sent a letter (hereinafter the “Defendant’s Letter”) to Plaintiff asserting that it owns the ’207, ’299, ’359, and ’970 patents and that Plaintiff’s “programs, products, services, systems and methods, including, but not limited to, its Shipment Tracking & Alert systems” infringe said patents (hereinafter collectively the “patents-in-suit”).

6. Defendant’s Letter demands that Plaintiff pay a substantial fee for a license under the patents-in-suit and threatens to commence a patent infringement action against Plaintiff if Plaintiff does not comply with Defendant’s demand.

7. Defendant’s Letter touts its and its predecessors’ aggressive and prolific patent infringement litigation track record.

8. Upon information and belief, Defendant and its predecessors have commence more than 500 patent infringement actions in United States Federal District Courts throughout the Country against more than 500 parties targeted by Defendant with similar demand letters.

9. Plaintiff is apprehensive that Defendant will file a patent infringement action against Plaintiff.

10. There is a justiciable controversy within the meaning of 28 U.S.C. §§ 2201 and 2202 between Plaintiff and Defendant concerning the validity and scope of Defendant's patents-in-suit and whether the Plaintiff has infringed same.

11. Plaintiff does not make, use, sell, offer for sale, import or otherwise practice any device, method, arrangement or thing that infringes the patents-in-suit.

12. Plaintiff is not infringing, has not infringed and is not liable for infringing any claim of the patents-in-suit, either directly or indirectly by inducing others to infringe or by contributing to infringement by others, literally or under the doctrine of equivalents or under the reverse doctrine of equivalents.

13. The patents-in-suit are invalid for failing to meet one or more requirements of 35 U.S.C. §§101, 102, 103, 112 and/or 282.

14. The patents-in-suit are invalid and unenforceable because they fail to meet one or more of the conditions for patentability set forth in Title 35, United States Code §§ 101, 102, 103, 112, and/or 282 on grounds including but not limited to that the claims therein are for unpatentable abstract ideas, are anticipated by prior art, are obvious in view of the prior art, are invalid for double patenting, and are indefinite.

15. The patents-in-suit are invalid for failure to provide adequate disclosure under 35 U.S.C. § 112, because, among other things, they fail to fully and clearly disclose the invention with such certainty so as to enable one skilled in the art to practice the full scope of the invention.

16. The patents specifications of the patents-in-suit are vague, ambiguous and indefinite and therefore the patents are invalid under 35 U.S.C. § 112 because, among other things, they fail to particularly point out and distinctly claim the subject matter of the inventions.

17. The inventions are not new or non-obvious compared to the prior art.

18. The '299, '359, and '970 patents each expired on or before May 18, 2013.

19. Defendant has failed to comply with the marking requirements of 35 U.S.C. § 287 and did not provide actual notice of the alleged infringement until it since the Letter. Accordingly, Defendant is precluded from recovering damages for alleged infringement, if any, prior to the date the Defendant actually notified Plaintiff of the alleged infringement.

20. Defendant is barred from asserting the patents against Plaintiff, and the patents are unenforceable against Plaintiff and are invalid because Defendant has asserted the patents against Plaintiff in an attempt to restrain the introduction or marketing of unrelated or non-infringing products, has extend the use of the patents beyond their scope to purge the market of competing non-patented goods, and has otherwise misused the patents for improper purposes.

21. Defendant is barred from remedy under the doctrine of unclean hands.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully prays for judgement against Defendants as follows:

A. Adjudging and declaring that each of the claims of the patents-in-suit are invalid and unenforceable;

B. Adjudging and declaring that Plaintiff has not infringed any valid, existing and enforceable claim of the patents-in-suit;

C. Enjoining and restraining Defendant, its officers, agents, servants, employees and attorneys, as well as those persons in active consort and participation with them who receive actual notice of the judgment, from directly or indirectly charging infringement, or instituting any further action for infringement, of the patents-in-suit against Plaintiff, it's officers, agents,

servants, employees, vendees, suppliers, customers or any others in direct or indirect privity with it;

D. Declaring Defendant's assertion of infringement exceptional under 35 U.S.C. §285 and awarding Plaintiff its reasonable attorney's fees, expenses and costs in this action; and

E. Granting such other and further relief against Defendants in favor of Plaintiff that seems to this court to be just, equitable and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury for issues so triable.

Dated: January 21, 2017

s/Lee Palmateer  
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