

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

	)	
	)	Case No. 1:19-cv-03360 <b>EGS</b>
JAMES L DRIESSEN	)	
	)	<b>JURY TRIAL DEMANDED</b>
V.	)	
	)	Judge: Emmet G. Sullivan
TARGET CORPORATION.	)	
	)	

**FIRST AMENDED COMPLAINT**

Pursuant to Federal Rules of Civil Procedure, Rule 15(a)(1), Plaintiff files his First Amended Complaint for a Civil Case once as a matter of course within 21 days after serving it.

**The Parties**

1. Plaintiff James L Driessen (hereafter sometimes “Driessen”) is an individual citizen residing at 3080 Southern Elm Ct., Fairfax, VA in Fairfax County, State of Virginia.

2. Defendant Target Co. Inc. (hereafter sometimes “Target”) is a corporation with its principal place of business at 1000 Nicollet Mall, Minneapolis, MN 55403 and can be served pursuant to F.R.C.P. Rule 4, under Minnesota Statutes 2016, section 5.25, Subdivision 1, at its registered agent at C T Corporation System Inc 1010 Dale St N, St Paul, MN 55117–5603 USA.

**Nature of the Action**

3. This is a civil action under the patent laws of the United States, 35 U.S.C. § 1 et seq. for infringement of U.S. 10,304,052 (hereafter sometimes “the ’052 patent” or “Patent-in-Suit”) (attached as Exhibit A). James Driessen is the sole patent owner of the ’052 patent.

**Jurisdiction and Venue**

4. As set forth more specifically below this Court has jurisdiction over the subject

**RECEIVED**  
NOV 12 2019

matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 et seq.

5. Diversity of citizenship exists under 28 U.S.C. § 1332 because James L Driessen is a resident of the state of Virginia and Target is a Minnesota Corporation whose principal place of business is in Minnesota, doing business with facilities maintained in the District of Columbia. This Court has personal jurisdiction over Target because, among other things, Target has committed, abetted, contributed to, and/or participated in the commission of patent infringement in violation of 35 U.S.C. § 271 in this judicial district and elsewhere that led to foreseeable harm and injury to James L Driessen.

6. This Court also has jurisdiction *in personam* over the entity known as Target because, among other things, Target has established minimum contacts within the forum such that the exercise of jurisdiction over Target will not offend traditional notions of fair play and substantial justice. For example, Target has placed products that practice and/or embody the claimed invention of the Patent-in-Suit into the stream of commerce with the reasonable expectation and/or knowledge that purchasers and users of such products were located within this district. In addition, Target has sold, advertised, marketed, and distributed products in this district that practice the claimed invention of the Patent-in-Suit. Target derives substantial revenue from the sale of infringing products distributed within the district, and/or expect or should reasonably expect their actions to have consequences within the district, and derive substantial revenue from interstate and international commerce.

7. Additionally, defendant Target is a Minnesota corporate citizen and by its actions of placing facilities and stores in this district has willingly submitted to suit within this district.

8. Further upon information and belief, Target has availed themselves of this Court in previous lawsuits.

9. Target has knowingly and actively induced, and continues to knowingly and actively induce (or are willfully blind to the) infringement of one or more claims of the Patent-in-Suit within this district by making, using, offering for sale, and selling infringing products, as well as by contracting with others to use, market, sell, and offer to sell infringing products, all with knowledge of the asserted Patent-in-Suit and its claims. Target's knowledge includes a reasonable assumption that the accused infringing instrumentalities described herein will be sold, marketed, and offered for sale with access or download rights to obtain the infringing digital fulfillment of the products sold in this district and elsewhere in the United States, and with the knowledge and specific intent to encourage and facilitate infringing sales and use of the products by others within this district and within the United States by creating and disseminating or displaying related promotional and marketing materials, instructional materials, download and fulfillment instructions, product manuals, and/or technical materials related to the infringing products.

10. Moreover, Target knowingly contributed to the infringement of one or more of the claims in the Patent-in-Suit by others in this district, and continues to contribute to the infringement of one or more claims of the Patents-in-Suit by others in this district by selling or offering to sell the redemption code and fulfillment instruction components of infringing products in this district, which components constitute a material part of the invention of the Patent-in-Suit, knowing of the Patent-in-Suit and its claims, knowing those components to be especially made or especially adapted for use to infringe one or more of the Patents-in-Suit, and knowing that those components are not staple articles or commodities of commerce suitable for

substantial non-infringing use. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b), because Target is subject to *in personam* jurisdiction in this district and has committed acts of infringement in this district.

11. The amount in controversy is known to exceed \$75,000 because according to best estimates available, there were approximately 400 Million instrumentalities sold in 2017 in the United States that contained a retail representation of an online digital product known as "+ Digital" or "Redeem Code" which are substantially identical to the alleged infringing instrumentality described herein, and are identical in substance to those being sold by Target. There is limited availability of Target's marketing or sales data from which exact numbers for 2019 (and/or the time periods relevant to this patent enforcement action) may be obtained. Driessen has confirmed several hundred alleged infringing instrumentalities on any given day in the store Plaintiff has visited located in Columbia Heights within the District of Columbia and in other locations within this district and within the United States. Driessen has consulted with external counsel on many occasions and has spent considerable attorneys fees in preparation for bringing this suit and will continue to incur legal expenses and attorney fees despite handling the bulk of this action *pro-se*.

#### **The Patent-in-Suit**

12. The '052 patent titled "Retail Point of Sale Apparatus for Internet Merchandising" was duly and lawfully issued by the U.S. Patent and Trademark Office on May 28, 2019. The Patent-in-Suit is the result of a child application in a chain of applications to the parent application U.S. 7,003,500 (hereafter sometimes '500 patent) which issued on February 21, 2006. The '500 patent was the subject of a previous suit naming this same defendant in the U.S. District Court for the District of Utah Case no. 2:2009 cv 00140 .

13. The '052 patent was applied for *inter alia* to correct perceived indefiniteness in the claiming language of the '500 patent as determined by the court in Utah. The '052 patent was published by the U.S. Patent and Trademark Office on January 5, 2017 (as US Patent Publication No. 2017/0004489) with claims substantially similar to the '500 patent, but with the perceived indefiniteness of the claiming language corrected.

14. On information and belief, Target (either directly or through suppliers, manufacturers, customers, endusers, distributors, retailers, streaming services, and online vendors) has monitored Driessen's patent prosecution at least since the previous litigation.

### **COUNT I**

#### **Infringement of U.S. Patent No. 10.304,052**

15. Paragraphs 1-14 above are incorporated by reference as if fully stated herein.

16. The '052 patent "Retail Point of Sale Apparatus for Internet Merchandising," is valid and enforceable. Target has infringed, and continues to infringe, one or more claims of the '052 patent under 35 U.S.C. § 271(a), either literally and/or under the doctrine of equivalents, by making, using, selling, and/or offering for sale in the United States, and/or importing into the United States, products encompassed by those claims, including for example, by making, using, selling, offering for sale, and/or importing into the United States, digital media known as "DVD + Digital," "Blu-ray + Digital," "Blu-ray + DVD + Digital", "INSTANT DIGITAL COPY," or other "Branded Digital Copy" as further described herein, with fulfillment or download as provided through related or third party media streaming and "digital locker" and "digital catalogue" services. In some sales the infringing instrumentalities are sold as product with names such as "digital copy," "UltraViolet," "Movies Anywhere," "Digital Now," "WB Digital," "Fox

Digital,” “Fox Digital Copy,” “All Access,” “PS4 ADD-ON CONTENT,” and other marketing, branding, or product descriptions (hereafter “Branded Digital Copy”). See Exhibit C specimen.

17. Target and/or others (e.g. endusers, distributors, retailers, online vendors, and fulfillment and streaming services) directly infringe one or more claims of the '052 patent under 35 U.S.C. § 271(a) by selling, offering to sell, or importing Branded Digital Copy products in the United States. Target has also actively induced infringement of, and continues to actively induce infringement of, one or more claims of the '052 patent under 35 U.S.C. § 271(b), either literally and/or under the doctrine of equivalents, by selling, importing, and/or offering for sale + Digital Copy and/or Branded Digital Copy to its customers with the knowledge of the '052 patent and its claims, with knowledge that its digital disc suppliers will fulfill the redemption offerings with knowledge and specific intent to encourage and facilitate those infringing sales of the '052 Infringing Products through the selling of the Branded Digital Copy versions, which Target knows contain URL links to other online vendors (streaming and digital lockers) and creating and disseminating promotional and marketing materials, instructional inserts, manuals, and other technical materials related to the '052 Infringing Products.

18. Target has contributed to the infringement of, and continues to contribute to the infringement of, one or more claims of the '052 patent under 35 U.S.C. § 271(c) and/or 271(f), either literally and/or under the doctrine of equivalents, by selling, offering for sale, and/or importing into the United States, the '052 Infringing Products and/or Branded Digital Copy Infringing Products, knowing that those products constitute a material part of the inventions claimed in the '052 patent, knowing that those products are especially made or adapted to infringe, and knowing that those products are not staple articles or commodities of commerce

suitable for non-infringing use; rather that the components are systems and/or processes that infringe claims of the '052 patent.

19. Target has knowledge of the '500 patent since at least as early as 2009, when Driessen sued Target for patent infringement of the parent '500 patent in the United States District Court for the District of Utah Case no. 2:2009 cv 00140 resulting in some claims of the '500 Patent being invalidated for indefiniteness. The '052 patent presumptively corrected those technicalities in the claiming language. On November 1, 2019 Driessen informed Target of the '052 patent issuance and correcting of the perceived indefiniteness of the '500 patent claims, wherein Driessen proposed scheduling a time to meet and participate in licensing discussions. On information and belief, Target has known about the '500 parent patent since as far back as 2007 when Driessen sent his initial correspondence to Target inviting licensing of the invention.

20. On information and belief, Target had knowledge of the '052 patent application since the time it was published as US Patent Publication No. 2017/0004489 on January 5, 2017, as a result of monitoring Driessen's patent prosecution activities. Target has infringed, and continues to infringe, the '052 patent. Driessen has been and continues to be damaged by Target's infringement of the '052 patent. Target has willfully infringed, and continues to willfully infringe, the '052 patent despite having knowledge of the '052 patent at least through Driessen's November 1, 2019 correspondence concerning their infringement. Target's conduct in infringing the '052 patent renders this case exceptional within the meaning of 35 U.S.C. § 285.

21. The accused infringing instrumentalities as mentioned above by any name, are a payment system, method of merchandise transfer, and/or method for selling (as set forth in independent claims 1, 14, and 19 of the '052 patent respectively) for preselected and itemized content serialized downloadable media material objects with codes on a physical access CARD.

22. The preliminary claim chart (attached hereto as Exhibit B incorporated by reference) which at this stage of the litigation is not binding and subject to final submission during standard and patent specific discovery process, —details how the accused instrumentalities by any name violate at least one of the claims of the Patent-in-suit.

**Prayer For Relief**

WHEREFORE, Driessen prays for judgment as follows:

A holding and judgment that Target has directly and/or indirectly infringed the Patent-in-Suit; that Target has willfully infringed each asserted claim of the Patent-in-Suit; that Driessen be awarded all damages adequate to compensate him for Target's infringement of the Patent-in-Suit, including damages pursuant to 35 U.S.C. §284 and provisional damages pursuant to 35 U.S.C. § 154(d), such damages to be determined by a jury and, if necessary to adequately compensate Driessen for the infringement, an accounting, and that such damages be trebled and awarded to Driessen with pre-judgment and post-judgment interest; that this case be declared an exceptional case within the meaning of 35 U.S.C. § 285 and that Driessen be awarded the attorney fees, costs, and expenses that he incurs prosecuting this action; and that Driessen be awarded such other and further relief as this Court deems just and proper. Driessen has demanded a trial by jury on all issues so triable.

Dated: 11-12-19 BY: James L. Driessen  
James L Driessen, Plaintiff *Pro Se*, jd@vibme.com  
3080 Southern Elm Ct.  
Fairfax, VA 22031  
(801) 360-8044

Filer certifies that a copy of this paper was sent via U.S. Postal Service First Class postage pre-paid to Defendant's place of business to the attention of Target Corporation Legal Department, 1000 Nicollet Mall, Minneapolis, MN 55403. The requirement of a certificate of service or other proof of service is satisfied by the automatic notice of filing sent by the CM/ECF software to pro se parties who have obtained CM/ECF passwords and to counsel.