

1 LAMKIN IP DEFENSE
2 Rachael D. Lamkin (246066)
3 655 Montgomery St., 7th Floor
4 San Francisco, CA 94111
5 916.747.6091
6 RDL@LamkinIPDefense.com

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8 *Attorneys for DJ Plaintiff*
9 *V. Sattui Winery*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 V. Sattui Winery)
11)
12 Plaintiff,) **PLAINTIFF’S AMENDED**
13 v.) **COMPLAINT FOR DECLARATORY**
14) **JUDGMENT OF NON-**
15 Landmark Technology A, LLC) **INFRINGEMENT AND INVALIDITY**
16)
17) Case No. 19-cv-05207-JD
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**PLAINTIFF’S AMENDED COMPLAINT FOR DECLARATORY JUDGMENT OF NON-
INFRINGEMENT AND INVALIDITY**

21 Plaintiff V. Sattui Winery (“VS Winery”) respectfully files this Amended Complaint
22 seeking a declaratory judgment of non-infringement and invalidity as to United States Patent No.
23 7,010,508 (the ’508 Patent).

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NATURE OF THE ACTION

25 1. This is an action for a declaratory judgment of non-infringement and invalidity
26 arising under the patent laws of the United States, Title 35 of the United States Code, and for
27 claims for Unlawful & Unfair Business Practices. A true and correct copy of the ’508 Patent was
28 filed as Dkt. No. 1-1.

THE PARTIES

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2 2. **Plaintiff V. Sattui Winery.** Plaintiff is a winery formed in 1885 by Vittorio Sattui,
3 an immigrant from Genoa, Italy. The winery voluntarily shut down when Prohibition went into
4 effect. The winery lay dormant until 1976, when Vittorio’s great-grandson, Dario, resurrected the
5 family business in the town of St. Helena in Napa Valley.

6 3. The product accused of infringement by Landmark Technology A, LLC
7 (“Landmark A”) is a standard off-the-shelf ecommerce website, <https://www.vsattui.com>.

8 4. The ’508 patent is owned by named inventor Lawrence Lockwood.

9 5. Lawrence Lockwood retains a financial interest in the ’508 patent.

10 6. Lawrence Lockwood receives a portion of all license fees earned by Landmark A.

11 7. Lawrence Lockwood has a role in determining which entities receive ’508 licensing
12 demands, demands either in the form of a letter such as those at Docket Nos. 1-3 and 1-4 or an
13 infringement complaint.

14 8. **Defendant Landmark A** is North Carolina limited liability company formed on
15 December 28, 2018.

16 9. From issuance until December of last year, Landmark Technologies, LLC
17 (“Landmark”) was the exclusive licensee of the ’508 patent.

18 10. Named inventor Lawrence Lockwood has an ownership interest in Defendant
19 Landmark Technology A, LLC.

20 11. Landmark, and possibly Landmark A, are owned in whole or in part by named
21 inventor Lawrence B. Lockwood.

22 12. The Los Angeles Times reported:

23 a. Lockwood graduated from La Jolla High in 1965 and attended three area colleges
24 and universities, pursuing liberal arts studies without receiving a degree. During
25 much of the 1970s, he worked for his father’s small travel agency as well as his
26 father’s printing shop.

27 b. Mr. Lockwood is not a computer scientist and has testified in deposition that he
28 “had never, for any length of time, used a personal computer” prior to filing his
patent applications that matured into the Asserted Patent. (Dkt. No. 1-2.)

 13. Landmark, its predecessor PanIP LLC, and Landmark A have sued hundreds of
companies for nuisance value amounts.

1 14. The average settlement amount for a license to the '508 patent is less than one
2 hundred dollars.

3 15. The claim terms of the '508 patent have never been construed in district court.

4 **JURISDICTION AND VENUE**

5 16. This Complaint arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§
6 2201 et seq. based on Defendant's threats to sue Plaintiff for patent infringement, thereby giving
7 rise to an actual case or controversy under 28 U.S.C. §§ 2201 and 2202. Defendant Landmark A
8 sent to VS Winery a cease and desist letter, demanding that VS Winery take a license and
9 threatening litigation. (Dkt. No. 1-3.) Landmark A has thus purposefully directed its charges of
10 infringement to VS Winery, which conducts business in the Northern District of California.
11 Landmark A's charges arise out of Landmark A's patent licensing activities in the Northern
12 District, pursued in letters from Landmark A and its counsel. As such, jurisdiction over Landmark
13 A in this forum is proper, reasonable, and fair.

14 17. Venue is proper in this District because VS Winery is incorporated in this State and
15 its only place of business is in this District. Further, Landmark A's only business is licensing and
16 by sending its enforcement letter into this District, it does business in this District.

17 **IMPORTANT BACKGROUND**

18 ***The Instant Infringement Allegations***

19 18. On July 26, 2019, Plaintiff VS Winery received a licensing demand from Landmark
20 A, citing US Patent No. 7,010,508 ("Demand Letter"). (Dkt. No. 1-3)

21 19. Landmark A accused Plaintiff's standard ecommerce website of infringement.

22 20. The accused website is an off-the-shelf website.

23 21. Landmark A asked for a \$65,000 dollar settlement.

24 22. Landmark A stated that the \$65,000 dollar number is a "substantial discount to the
25 historical licensing price of Landmark's portfolio".

26 23. But it appears Landmark A offers everyone the same number. (*See* Dkt. Nos. 1-3,
27 1-4.)

28 24. The demand letters sent by Landmark A and its counsel appear to each employ
29 identical infringement allegations that ignore the bulk of the claim limitations. (*Id.*)

30 25. The demand letters sent by Landmark A also employ statements that are divorced
31 from the claims of the '508 patent and include false statements:

- 1 a. The Demand Letter, Dkt. No. 1-3, fails to discuss the video user interface
2 limitations.
- 3 b. The Demand Letter, Dkt. No. 1-3, fails to discuss the forward chaining.
- 4 c. The Demand Letter, Dkt. No. 1-3, states that Landmark’s patents are “widely
5 regarded”.

6 26. Landmark A’s demand letters also continue to repeat claims, such as being a
7 “pioneer patent,” when the USPTO has already chastised Lockwood for employing the term,
8 explaining that the phrase does not indicate that the ’508 Patent is a technological invention. (Dkt.
9 No. 1-5, at 14-15.)

The ’508 Patent

10 27. The ’508 patent is directed to “terminals used by banking and other financial
11 institutions to make their services available at all hours of the day from various remote locations.”
12 ’508, 1:22-25.

13 28. The priority date for the ’508 patent is January 24, 1986.

14 29. The Patent Trial and Appeal Board at the USPTO (the “PTAB”) determined that the
15 claims of the ’508 are directed toward “a financial product or service” under the Americans Invent
16 Act (“AIA”). (Dkt. No. 1-5, at 12.)

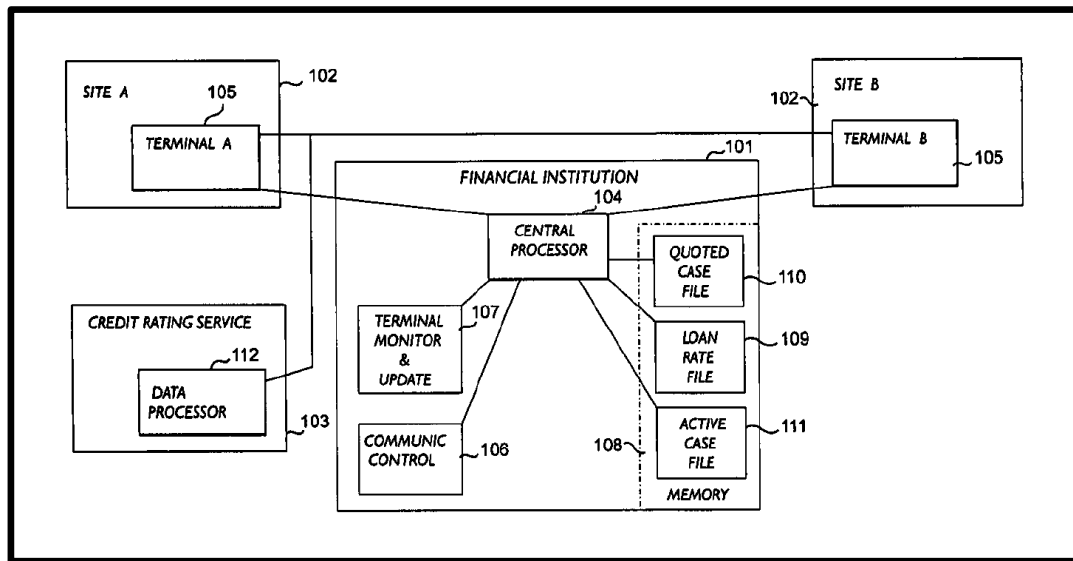
17 30. Lockwood told the USPTO that the claims of the ’508 patent do not cover systems
18 employing a fixed menu tree.

19 31. The accused website employs a fixed menu tree.

20 32. As such, no reasonable litigant could believe that the ’508 reads on website that
21 sells wine.

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23 [remainder of page intentionally left blank]
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33. Figure 1 is representative of the claims of the '508:



34. The "station" term in the claims of the '508 is limited to Figure 2 of the '508 patent.

35. The terminals (aka stations, 105) of the claimed system are analogous to ATMs where a user visits the remote terminal and interacts with that terminal.

36. But instead of obtaining cash from one's own account, the user obtains a loan or other financial product from a third-party institution.

37. During the prosecution of the '508 patent, Lockwood told the USPTO that the terminals of the '508 themselves were able to perform complex, on site, operations.

38. During the prosecution of the '508 patent, Lockwood told the USPTO the interactive multimedia terminal is uniquely capable of providing a video-based user interface while dynamically sending and fetching remote information.

39. During the prosecution of the '508 patent, Lockwood told the USPTO that the '508 patent presents a key technical solution to the technical problem of tying together financial institution data processing, the computer services of a credit reporting bureau, and a plurality of remote terminals.

40. During the prosecution of the '508 patent, Lockwood told the USPTO, each remote station displays a live image and interactive series of questions and answers.

41. During the prosecution of the '508 patent, Lockwood told the USPTO the claims of the '508 require an interactive video presentation on the video display of the station or terminal.

42. In other words, the interactive multimedia terminal of the '508 Patent is capable of providing a video-based user interface.

1 43. The claims of the '508 require that the terminal itself contain sequences including
2 instructions for operating said station, and said instructions are provided through the video
3 interface.

4 44. During the prosecution of the '508 patent, Lockwood told the USPTO, because
5 each proposed applicant using the terminal (or station) of the '508 Patent will provide different
6 answers to earlier questions, the proposed applicant may be provided with subsequent questions
7 different from those posed to some other proposed applicant.

8 45. During the prosecution of the '508 patent, Lockwood told the USPTO that each
9 user of the claimed system of the '508 Patent will be provided with an individualized presentation
10 via the video-based interface.

11 46. The claims of the '508 require that its system makes suggestions, or independently
12 provides something different than what was requested but more responsive to the user's needs, and
13 output said suggestions via the video display.

14 47. The claims of the '508 require forward chaining.

15 48. The forward chaining happens on-site at the station or terminal.

16 49. In other words:

- 17 a. the claimed terminal or station of the '508 Patent interacts with a user who visits the
18 remote location of the terminal in order to obtain a financial product or service.
- 19 b. The terminal presents the user with a live image of a "fictitious" financial
20 institution employee (e.g. a fictitious loan officer) who first, tells the user how to
21 use the terminal.
- 22 c. The user and the fictitious employee then engage in an iterative back and forth. The
23 user types questions into a keyboard or touch pad and the fictitious employee
24 answers the user's questions through the video user interface.
- 25 d. Further, the fictitious employee is able to make suggestions for financial products
26 or services that were not raised by the user (e.g., a small loan or different type of
27 investment than the one sought).
- 28 e. Concurrently, the terminal is able to "forward chain;" *i.e.*, take in information from
a third-party entity (like a credit rating service) and the user to offer the user new,
information, unique to that user.

VS Winery's Ecommerce Website Has Nothing to do With The '508 Patent

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2 50. Clearly, the above-described patent has nothing to do with a standard ecommerce
3 website such as VS Winery's.

4 51. VS Winery does not offer financial products or services as that term is defined in
5 AIA § 18(d)(1), 37 CFR § 42.301.

6 52. VS Winery sells wine.

7 53. To buy wine from VS Winery's website, a customer accesses VS Winery's website
8 through the browser on her home computer, laptop, or mobile device.

9 54. On the accused system, there is no fictitious agent viewed on the customer's screen.

10 55. On the accused system, there is no fictitious agent offering instructions to the
11 customer on how she might use her own computer.

12 56. On the accused system, there is no fictitious agent communicating with the
13 customer through a video-based interface.

14 57. The videos on VS Winery's website are hosted by YouTube.

15 58. The YouTube videos the user sees with her browser on her computer or mobile
16 screen are static (*i.e.*, not interactive).

17 59. VS Winery's ecommerce website has none of the above claimed functionality:

- 18 a. no interactive video,
- 19 b. no unique presentation to the operator,
- 20 c. no forward chaining.

21 60. VS Winery's ecommerce website, which sells wine through standard shopping
22 functionality, has nothing to do with an alleged complex terminal allowing an operator to interact
23 with a financial institution through a video-based interface on said terminal where the video
24 personality (the "fictitious loan officer") provides to the user directions, information, and products
25 or services different than those sought by the user.

26 61. Again, no reasonable litigant could conclude the VS Winery's ecommerce website
27 infringes the claims of the '508 Patent.

Landmark & Landmark A Appear To Be Splitting The Baby. Improperly.

28 62. Lockwood initially asserted the '508 Patent via an entity called Landmark
Technology LLC ("Landmark").

63. From at least 2008 to 2013, Landmark asserted the '508 patent with US Patent No.
6,289,319 (the '319).

1 64. The '319 patent is in the same family as the '508 Patent.

2 65. But in February 2019, an entity called Landmark Technology A, LLC (“Landmark
3 A”) began asserting the '508 Patent.

4 66. Landmark continues to assert the '319 Patent.

5 67. Landmark A was formed in North Carolina in December 2018; its Articles of
6 Organization were filed with the North Carolina Secretary of State on 12/28/2018.

7 68. According to documents filed with the North Carolina Secretary of State, the
8 business of Landmark A is “patent licensing”.

9 69. Landmark A filed its first lawsuit on February 5, 2019.

10 70. Its highly usual for an entity to sever a single patent from a patent family and sell or
11 assign it individually.

12 71. Lockwood’s severance of the '508 Patent from its family and assignment thereof to
13 a separate entity suggests that Lockwood may be trying to insulate his separate entities from
14 attorney’s fees awards.

15 ***Landmark and Landmark A are Asserting Different Patents Against the Same Technology***

16 72. Landmark is asserting the '319 Patent against ecommerce websites.

17 73. Concurrently, Landmark A is asserting the '508 against ecommerce websites.

18 74. For example, Landmark A has asserted the '508 Patent against a website that sells
19 fabric through what appears to be a standard ecommerce website. *Landmark Technology A, LLC v.*
20 *The Miami Corporation*, No. 1:19-cv-00653.

21 75. In that Complaint, Landmark A alleges, “Landmark A is further informed and
22 believes, and on that basis alleges, that Miami Corporation operates the website
23 <https://www.miamicorp.com/>, which is a supplier of upholstery fabric, outdoor fabric and
24 upholstery supplies. Miami Corporation derives a significant portion of its revenue from sales and
25 distribution via electronic transactions conducted on and using at least, but not limited to, the
26 Internet websites located at <https://miamicorp.com/> and/or the functionality found through the
27 “sign in” and “cart” functions, and incorporated and/or related systems (collectively the “Miami
28 Corporation Website” or “Accused Instrumentality”).

76. Landmark has asserted the '319 Patent against website that sells nuts online.
Landmark Technology, LLC v. Kanan Enterprises, Inc., No. 1:18-cv-02339.

77. In that Complaint, Landmark alleges, “Landmark is further informed and believes,
and on that basis alleges, that Kanan operates the website www.kingnut.com, which is in the

1 business of selling nuts, snacks and candy. Kanan derives a significant portion of its revenue from
2 sales and distribution via electronic transactions conducted on and using at least, but not limited to,
3 the Internet websites located at www.kingnut.com and/or the functionality found through the “shop
4 now,” “sign in” and “login” functions, and incorporated and/or related systems (collectively the
“King Nut Website”).

5 78. The language in the complaints from these two different Plaintiffs, asserting two
6 different patents, is nearly identical.

7 79. By way of second example, in the *Miami* case, *supra*, Landmark A filed an
8 infringement chart with its complaint that employs a “representative terminal” as a stand in for the
9 terminal in the asserted ’508 Patent.

10 80. The core of the claimed system in the ’508 Patent is the allegedly special terminal
described above.

11 81. Yet Landmark A employs an off-the-shelf “representative terminal” in its
12 infringement charts, an HP Compaq 6200 Pro Desktop PC. (*Miami*, Dkt. No. 1-8, at 15.)

13 82. The “representative terminal” in the *Miami* case, and the *Kanan* case, *supra*, is the
14 same terminal cited in Landmark A’s claim chart herein, Dkt. No. 12-8.

15 83. Landmark, an allegedly different entity asserting a different patent, employs the
16 exact same representative terminal in its charts. (*Kanan*, Dkt. No. 1-7, at 10.)

17 84. Landmark A’s use of a “representative terminal” instead of naming an actual
18 terminal used by alleged infringers, especially a standard HP desktop computer, is further evidence
of Landmark A’s bad faith infringement allegations.

19 85. Landmark’s allegations of infringement against a standard ecommerce website
20 (asserting the ’319 Patent) are indistinguishable from Landmark A’s allegations of infringement
21 against a standard ecommerce website (asserting the ’508 Patent).

22 86. The fact that two purportedly separate entities are asserting different patents against
23 the same technologies (standard ecommerce websites) in a seemingly coordinated fashion is
further evidence of bad faith litigation.

24 **COUNT 1: DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

25 87. Plaintiff incorporates by reference paragraphs 1-86, as if fully set forth herein.

26 88. Plaintiff does not infringe any of the claims of the ’508 Patent for the reasons stated
27 above, *inter alia*, and specifically paragraph nos. 27-60.
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COUNT II: DECLARATORY JUDGMENT OF INVALIDITY:

Section 112: Indefiniteness

89. Plaintiff incorporates by reference paragraphs 1-88, as if fully set forth herein.

90. Each of the claims of the '508 patent are invalid pursuant to Section 112(b).

91. At the request of Ebay Enterprises, on May 20, 2014, the Patent Trial And Appeal Board of the USPTO (the "PTAB") instituted a Covered Business Review of the '508 Patent. (Dkt. No. 1-5.)

92. The PTAB determined that the claims of the '508 patent were likely indefinite. (*Id.*, at 22.)

93. The PTAB also determined, "the subject matter of claim 1, as a whole, does not recite "a technological feature that is novel and unobvious over the prior art". (*Id.*, at 14.)

94. Landmark settled with Ebay before a final order issued.

95. Landmark A is asserting claims it understands to be fatally indefinite.

COUNT III: DECLARATORY JUDGMENT OF INVALIDITY:

Section 112: Lack of Enablement

96. Plaintiff incorporates by reference paragraphs 1-95, as if fully set forth herein.

97. The specification of the '508 patent does not enable someone of skill in the art ("POSITA") to make the invention without undue experimentation.

98. Specifically, "forward chaining" is not enabled in the specification of the '508 patent.

JURY TRIAL

VS Winery requests a jury trial for all issues so triable.

PRAYER FOR RELIEF

Plaintiff V. Sattui Winery respectfully seeks:

- An Order determining that its website does not infringe any claim of the '508 Patent;
- An Order determining that each claim of the '508 is invalid;
- An order finding Landmark and its counsel jointly and separately liable for Plaintiff's cost and attorney's fees pursuant to 35 U.S.C. §285 and 29 U.S.C. §1927.

Respectfully submitted,

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Rachael D. Lamkin

Rachael D. Lamkin

*Attorneys for DJ Plaintiff
VS Winery*

CERTIFICATE OF SERVICE

On this date, 11/14/19, I did hereby serve Landmark Technologies A, LLC by filing the below document with the Court's ECF system.

**PLAINTIFF'S AMENDED COMPLAINT FOR DECLARATORY JUDGMENT OF NON-
INFRINGEMENT AND INVALIDITY**

Rachael D. Lamkin

Rachael D. Lamkin