

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

KNIX WEAR, INC.,

Plaintiff,

v.

LANDMARK TECHNOLOGY A, LLC,

Defendant.

Case No. 1:21-cv-344

**COMPLAINT FOR
DECLARATORY
JUDGMENT**

Plaintiff Knix Wear, Inc., by and through its counsel of record, brings this Complaint for Declaratory Judgment of Non-Infringement and Declaratory Judgment of Invalidity of U.S. Patent No. 7,010,508 (“508 Patent”) against Defendant Landmark Technology A, LLC, and states and alleges as follows:

NATURE OF THE ACTION

1. This is an action under the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, for declaratory judgment of non-infringement and invalidity of the ‘508 Patent arising under the patent laws of the United States, Title 35 of the United States Code.

PARTIES

2. Knix Wear, Inc. (“Knix Wear”) is a duly formed business incorporated under the laws of Ontario, Canada, having its principal place of business at 70 Claremont Street, Toronto, Ontario M6J 2M5, Canada.

3. Upon information and belief, Landmark Technology A, LLC (“Landmark ”) is a limited liability company organized under the laws of the State of North Carolina with its principal place of business located at 2530 Meridian Parkway, Suite 300, Durham, NC 27713.

4. Upon information and belief, from issuance until December of 2018, the ‘508 Patent was owned by Landmark Technologies, LLC (“Old Landmark”). Old Landmark, and possibly Landmark, are owned in whole or in part by named inventor of the ‘508 Patent, Lawrence B. Lockwood.

JURISDICTION AND VENUE

5. The Court has original and exclusive subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this Complaint states claims arising under an Act of Congress relating to patents, 35 U.S.C. § 271.

6. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*, based on the declaratory judgment sought by Knix Wear due to Landmark’s accusations against Knix Wear of patent infringement and its pattern of

actual infringement litigation concerning the ‘508 Patent, thereby giving rise to an actual case and controversy under 28 U.S.C. § 2201 and 2201.

7. This Court has personal jurisdiction over Landmark because Landmark’s principal office is located in Durham, North Carolina.

8. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(1) & (2), and 28 U.S.C. § 1400(b) because Landmark resides in the Middle District of North Carolina.

FACTUAL BACKGROUND

A. GENERAL BACKGROUND

9. On information and belief, Landmark does not practice the claims of the ‘508 Patent, and Landmark does not make, use, or sell any product or services of its own.

10. On information and belief, Landmark’s sole business model and activity involves sending letters accusing others of patent infringement and threatening litigation. (*See Exhibit E*).

11. On information and belief, Landmark is, or has been, involved in over twenty (20) other actions against various companies involving claims about the ‘508 Patent, at least thirteen (13) of which were filed by Landmark as patent infringement

actions.¹ On information and belief, Old Landmark filed dozens of patent infringement actions against various companies asserting claims based on its “patent portfolio,” including the ‘508 Patent.

12. In each of the known thirteen patent infringement actions filed by Landmark as actions alleging infringement of the ‘508 Patent, Landmark has sought an injunction against the accused infringer.

13. Landmark also appears to systematically and quickly settle litigation involving the ‘508 Patent prior to any potentially damaging rulings on the baselessness of Landmark’s claims or the invalidity of the ‘508 Patent, thereby preserving Landmark’s ability to extract licensing fees from other companies moving forward.

B. LANDMARK’S DEMANDS TO KNIX WEAR

14. On or about January 29, 2021, Landmark sent a demand letter (the “First Letter”) to Ms. Joanna Griffiths of Knix Wear, stating that the letter regarded

¹ *Landmark Technology A, LLC v. Specialty Bottle, Inc.*, Case no. 2:2019-cv-311 (W.D. Wash.); *Landmark Technology A, LLC v. The Essential Baking Co., Inc.*, Case no. 2:2019-cv-1208 (W.D. Wash.); *Landmark Technology A, LLC v. Woodland Foods, Ltd.* Case no. 1:2019-cv-2557 (N.D. Ill.); *Landmark Technology A, LLC v. U.S. Safety Gear, Inc.*, Case no. 4:2019-cv-270 (N.D. Ohio); *Landmark Technology A, LLC v. The Miami Corp.*, Case no. 1:2019-cv-653 (S.D. Ohio); *Landmark Technology A, LLC v. Amerimark Direct, LLC*, Case no. 1:19-cv-1077 (S.D. Ohio); *Landmark Technology A, LLC v. Frost Elec. Supply Co.*, Case no. 4:19-cv-3307 (E.D. Mo.); *Landmark Technology A, LLC v. Sterling Paper Co.*, Case no. 2:20-cv-769 (S.D. Ohio); *Landmark Technology A, LLC v. Tom Bihn Inc.*, Case no. 2:20-cv-328 (W.D. Wash.); *Landmark Technology A, LLC v. Mailender, Inc.*, Case no. 1:20-cv-479 (S.D. Ohio); *Landmark Technology A, LLC v. Stoneway Elec. Supply Co.*, Case no. 2:20-cv-974 (W.D. Wash.); *Landmark Technology A, LLC v. Art of Beauty Co.*, Case no. 1:20-cv-1637 (N.D. Ohio); *Landmark Technology A, LLC v. Saltworks, Inc.*, Case no. 2:21-cv-134-BJR (W.D. Wash).

“Infringement of Landmark Technology A, LLC’s Patent Rights.” A true and correct copy of the First Letter as received is attached as **Exhibit A**.

15. In the First Letter, counsel for Landmark claims that Landmark has “exclusive rights” to patents including the ‘508 Patent and further claims that “the specific functionalities implemented by Knix Wear using their servers and devices interfaced to Knix Wear’s web servers constitutes use of the technology taught within the meaning of Claim 1 of the ‘508 patent.” (See **Exhibit A**).

16. This First Letter offers no element by element analysis relative to Claim 1 or any other type of analysis or description of the specific Knix Wear systems believed to practice the claims of the ‘508 Patent. Instead, Landmark simply includes a link to a single page of Knix Wear’s website² along with nonspecific accusations, which upon information and belief, are common to most or all of the demand letters issued by Landmark and its attorneys. (See **Exhibit E**). In the First Letter, Landmark further demanded payment through deceptive and misleading information regarding the importance of the ‘508 Patent as a “pioneer patent” and “of greater technical importance.”

17. The First Letter concluded by offering Knix Wear “a non-exclusive license to its ‘508 Patent, for \$65,000.” In order to dissuade Knix Wear from defending itself, Landmark threatened in the First Letter that this “substantial

² See <https://bit.ly/3pcuMGv>

discount” would not be available in the event of litigation, and it demanded a response from Knix Wear within 15 days.

18. Nowhere in the First Letter did Landmark indicate that its offer was negotiable. Upon information and belief, this tactic is designed to extract payment from Knix Wear (and other recipients of similar letters), knowing that the payment would be significantly less expensive than defending against even an invalid patent.

19. On or about March 5, 2021, Landmark sent a second, follow up letter to Ms. Joanna Griffiths of Knix Wear (the “Second Letter”). The Second Letter reiterated the licensing offer to Knix Wear for a non-exclusive license to the ‘508 Patent for \$65,000. A true and correct copy of the Second Letter as received is attached as **Exhibit B**.

20. Nowhere in the Second Letter did Landmark indicate that its offer was negotiable.

21. Knix Wear had no knowledge of Landmark or the ‘508 Patent until receipt of the First Letter.

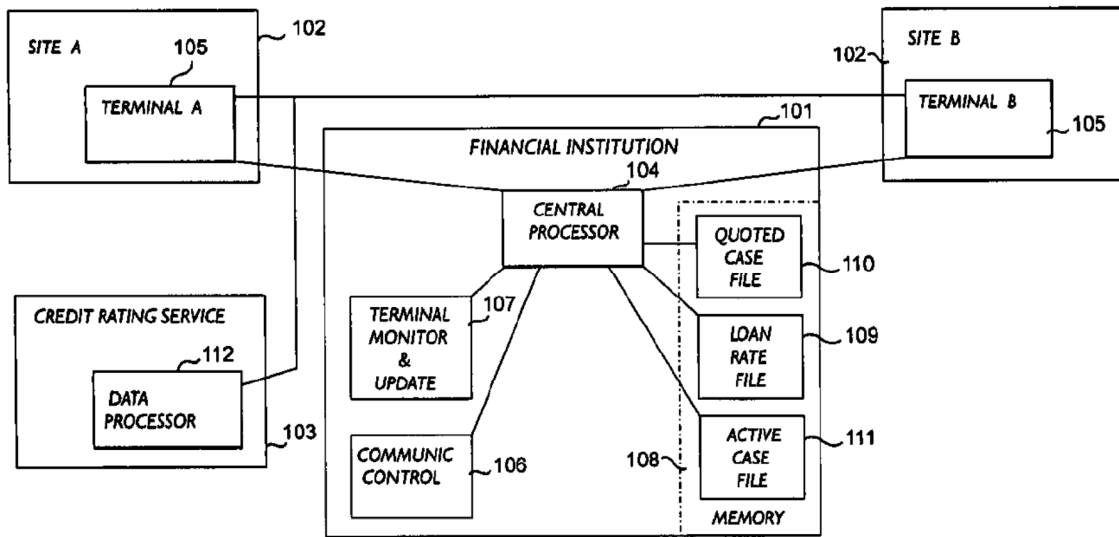
C. THE ‘508 PATENT

22. The ‘508 Patent, entitled “Automated Multimedia Data Processing Network,” was issued on March 7, 2006 to Lawrence B. Lockwood of La Jolla, California. (**Exhibit C**).

23. The ‘508 Patent is directed to an automated multimedia system for data processing. Specifically, the ‘508 Patent is directed to “terminals used by banking and other financial institutions to make their services available at all hours of the day from various remote locations.” (**Exhibit C**, col. 1, ll. 23-25).

24. The ‘508 Patent states “[t]he principal object of this invention is to provide an economical means for screening loan applications.” (**Exhibit C**, col. 1, ll.46-47). Yet that description and the financial institutions aspects of the patent, which limit the claims as explained below, have nothing to do at all with Knix Wear’s business. Other objects of the invention include: “a system that ties together financial institution data processing, the computer services of a credit reporting bureau, and a plurality of remote terminals. Each remote terminal displays the live image of a fictitious loan officer who helps the applicant through an interactive series of questions and answers designed to solicit from the applicant all the information necessary to process his loan application.” (**Exhibit C**, col. 1, l. 64 – col. 2, l. 4).

25. Figure 1 from the ‘508 Patent is representative of the claims of the ‘508 Patent:



26. The terminals of the claimed system are analogous to ATMs where a user visits the remote terminal and interacts with that terminal. But instead of obtaining cash from one's accounts, the user obtains a loan or other financial product from a third-party institution. Part of the invention was to move beyond typical vending machines and into the realm of "more complex types of goods and services distribution which requires a great deal of interaction between individual or between individuals and institutions." (**Exhibit C**, col.1, ll. 40-43).

27. According to the '508 Patent, remote terminals present a live image of a "fictitious" automated loan officer who would guide users through questions and then "make a decision based on all the information gathered..." including offering a loan amount. (**Exhibit C**, col. 1, l. 64-col. 2., l. 11).

28. According to the patent and prosecution history, the '508 Patent presents a solution to a problem of tying together financial institution data processing, the computer services of a credit reporting bureau, and a plurality of remote terminals. Each remote terminal displays a live image and interactive series of questions.

29. According to the patent, its prosecution history, and its claims, the '508 Patent requires an interactive video presentation on the video display of the station or terminal. (See **Exhibit C**, col. 7, ll. 4-12).

30. The claims of the '508 Patent require that its method make suggestions, or independently provide something different than what was requested but more responsive to the user's needs, and output said suggestions via the video display.

31. Claim 1 of the '508 Patent, which Knix Wear is alleged to have infringed, claims as follows:

1. An automated multimedia system for data processing which comprises:
 - a computerized installation including a database, means for entering data into said database, and a program means for storing, processing, updating, and retrieving data items in response to coded requests from stations in communication with said installation;
 - at least one station including a general purpose computer and a program applicable to said computer for sending said requests to said installation;
 - means for communicating data back and forth between said installation and said station;
 - said station further including:
 - a mass memory and means associated therewith for storing and

retrieving textual and graphical data; a video display and means associated therewith for displaying textual and graphical data; means for entering information into said computer;

means for programming sequences of inquiring messages on said video display in accordance with preset routines and in response to said information;

said sequences including instructions to an operator of said station for operating said station;

and means for selectively and interactively presenting to said operator interrelated textual and graphical data describing a plurality of transaction options, and for selectively retrieving data from said mass memory;

means for storing information, inquiries, and orders for transactions entered by said operator via said means for entering information;

means for transmitting said inquiries and orders to said installation via said means for communicating;

means for receiving data comprising operator-selected information and orders from said installation via said means for communicating;

and means for interactively directing the operation of said computer, video display, data receiving and transmitting means, and mass memory comprising means for holding an operational sequencing list, ***means for processing said operator-entered information, inquiries, and orders according to backwardchaining and forward-chaining sequences***, and means responsive to the status of said computer, display, mass memory, and data receiving and transmitting means for controlling their operation;

said means for processing including means for analyzing said operator-entered information and means, responsive to said means for analyzing, for presenting additional inquiries in response to said operator-entered information;

said computerized installation further including:

means responsive to items received from said station for immediately transmitting selected data retrieved from said database to said station;

means responsive to an order received from said station for updating data in said database including means for correlating to a particular set of data received from said station;

whereby said system can be used by a plurality of entities, each

using one of said stations, to exchange data, and to respond to inquiries and orders instantaneously or over a period of time.

(**Exhibit C**, col. 6, l. 35 – col. 7, l. 3 (emphasis added)).

32. In order to infringe on this claim of the ‘508 Patent, if it were valid, which Knix Wear does not concede, Knix Wear must practice every single limitation/element of Claim 1 as set forth above.

33. Claim 1 of the ‘508 Patent contains a number of means-plus-function limitations. Under 35 U.S.C. §112, the claims are limited to the corresponding structure described in the patent’s specification.

34. Upon information and belief, during prosecution, the Examiner initially rejected the patent application that ultimately issued as the ‘508 Patent under 35 U.S.C. § 112 as being indefinite, non-enabling, and lacking specification support.

35. Upon information and belief, in response, the named inventor stated that support for the means-plus-function claims in the ‘508 Patent could be found in the specification, using as support information from the specification that limits the claims to “financial institution[s],” “process[ing] loan applications,” “periodically polling the various terminals...in order to verify their status and proper operation,” and “fictitious officer.”

36. Upon information and belief, the ‘508 Patent was challenged at the USPTO according to a program for requesting review by the USPTO's Patent Trial

and Appeal Board (“PTAB”) for patents that are business method patents. (*See Exhibit D*).

37. As a part of this USPTO PTAB review, the PTAB determined that the claims of the ‘508 Patent are directed toward “a financial product or service” under the America Invents Act (“AIA”), that “the subject matter of claim 1, as a whole, does not recite ‘a technological feature that is novel and unobvious over the prior art,’” and that the claims are more likely than not invalid under 35 U.S.C. § 112. (*Exhibit D* at 12, 14, 20 & 22).

38. As a part of this USPTO PTAB review, the PTAB stated that there is no evidence that the ‘508 Patent is in any way a “pioneer patent.” (*Exhibit D* at 14-15).

39. Upon information and belief, no final decision was reached in this USPTO PTAB review because the parties, including inventor Lockwood, settled the underlying dispute prior to a final decision on the merits by the PTAB.

40. Because of the PTAB decision, the ‘508 Patent does not, or should not, enjoy a presumption of validity.

41. Claim 1 of the ‘508 Patent requires utilization of backward or forward chaining in the processing of operator entered information, inquiries, and orders, and each of the other claims of the ‘508 Patent include the same requirements.

42. Knix Wear’s website does not perform “backward-chaining” or “forward-chaining” to the extent Knix Wear can discern the meaning of such vague and insufficiently described limitations of the claims. Therefore, Knix Wear does not infringe on Claim 1 of the ‘508 Patent or any other claim as Knix Wear does not use any backward and forward chaining process.

43. Furthermore, the ‘508 patent has nothing to do with a standard e-commerce website such as Knix Wear’s.

44. Knix Wear’s website, which sells women’s clothing and swimwear through standard shopping e-commerce functionality, has nothing to do with an alleged complex terminal allowing an operator to interact with a financial institution through a video-based interface on said terminal where the video personality (the “fictitious loan officer”) provides to the user directions, information, and products or services different than those sought by the user.

45. No reasonable litigant could conclude that Knix Wear’s e-commerce website infringes the claims of the ‘508 Patent.

46. No reasonable litigant could conclude that the ‘508 Patent is valid and enforceable.

47. Upon information and belief, no assignment to Landmark of rights for the ‘508 Patent has been filed with the USPTO. Thus, it is unknown whether Landmark actually holds enforcement rights to the ‘508 Patent.

COUNT I

DECLARATION OF INVALIDITY OF U.S. PATENT NO. 7,010,508

48. Knix Wear restates and incorporates by reference all allegations in paragraphs 1-47 of this Complaint as if fully set forth herein.

49. Landmark claims to have exclusive rights to the '508 Patent.

50. In a letter specifically referencing infringement of the '508 Patent, Landmark demanded that Knix Wear pay for a license to the '508 Patent within 15 days.

51. Landmark is in the business of threatening litigation and following through on that threat specifically with respect to the '508 Patent. A review of Landmark's record demonstrates a consistent, recent, and frequent pattern of infringement litigation over the '508 Patent, creating a reasonable fear that Knix Wear is Landmark's next infringement litigation target.

52. The claims of the '508 Patent are invalid under at least any one of 35 U.S.C. §§ 101, 102, 103, and 112.

53. The claims of the '508 Patent do not constitute patentable subject matter pursuant to 35 U.S.C. § 101 and are invalid or ineligible patent on an abstract idea. The '508 Patent claims the abstract idea of automated data processing of business transactions. Nothing in the claims, "transforms the nature of the claims" into patent eligible subject matter. *Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, 566

U.S. 66, 78, 132 S. Ct. 1289, 1291, 1297, 182 L. Ed. 2d 321 (2012). Furthermore, “[t]he mere recitation of a generic computer cannot transform a patent-ineligible abstract idea into a patent eligible invention.” *Alice Corp. Pty. v. CLS Bank Int’l*, 573 U.S. 208, 223, 134 S. Ct. 2347, 2358, 189 L. Ed. 2d 296 (2014).

54. Additionally, the ‘508 Patent is invalid as anticipated pursuant to 35 U.S.C. § 102 or as obvious pursuant to 35 U.S.C. § 103. The PTAB stated that claim 1 of the ‘508 Patent “as a whole, does not recite ‘a technological feature that is novel and unobvious over the prior art.’” (**Exhibit D**, at 14).

55. The claims of ‘508 Patent are invalid under 35 U.S.C. § 112 for at least the reasons that the claims are indefinite and not enabled by the patent’s specification, which does not mention, teach, or discuss processing orders, and because the specification does not provide any structure for the numerous means-plus-function clauses recited in the claims other than generic computer parts.

56. The PTAB determined that the claims of the ‘508 Patent were likely indefinite. (**Exhibit D**, at 20, 22).

57. Based on Landmark’s First Letter, Second Letter, and the accusations of patent infringement contained therein, especially in light of Landmark’s pattern of recent infringement litigation over the ‘508 Patent, and Knix Wear’s denial of infringement, a substantial, immediate, and real controversy exists between Knix Wear and Landmark regarding whether Landmark is seeking to enforce an invalid

patent against Knix Wear. A judicial declaration is necessary to determine the parties' respective rights regarding the '508 Patent.

58. This controversy arises, in whole or in part, from Landmark's demand letters to Knix Wear claiming that Knix Wear infringes at least Claim 1 of the '508 Patent, and demanding Knix Wear pay for a license to the '508 Patent or be sued. Landmark's demand letters alone, and in combination with Landmark's known pattern and practice of filing patent infringement lawsuits against licensing targets that refuse to pay the license fee, clearly demonstrates Landmark's intent to seek to wrongfully enforce the '508 Patent against Knix Wear.

59. A judicial declaration that the '508 Patent is invalid is necessary and appropriate so that Knix Wear may ascertain its rights regarding the '508 Patent and to prevent further injury to Knix Wear.

60. The '508 Patent is invalid, and Knix Wear is entitled to a declaration so stating.

COUNT II

NON-INFRINGEMENT U.S. PATENT NO. 7,010,508

61. Knix Wear restates and incorporates by reference all allegations in paragraphs 1-60 of this Complaint as if fully set forth herein.

62. Landmark claims to have exclusive rights to the '508 Patent.

63. In a letter specifically referencing infringement of the '508 Patent, Landmark demanded that Knix Wear pay for a license to the '508 Patent within 15 days.

64. Landmark is in the business of threatening litigation and following through on that threat specifically with respect to the '508 Patent. A review of Landmark's record demonstrates a consistent, recent, and frequent pattern of litigation, creating a reasonable fear that Knix Wear is Landmark's next infringement litigation target.

65. On information and belief, Landmark failed to conduct any pre-demand due diligence prior to demanding a \$65,000 license payment from Knix Wear. Even a cursory pre-demand research effort would have yielded that, under the plain language of the '508 Patent claims, Knix Wear's system and/or technology does not infringe any valid and enforceable claim of the '508 Patent.

66. Knix Wear has not infringed and does not infringe any valid and enforceable claim of the '508 Patent, whether literally or under the doctrine of equivalents.

67. Additionally, Knix Wear is not liable for any induced, contributory, divided, or other indirect infringement of any valid and enforceable claim of the '508 Patent. Neither Knix Wear nor its customers who access its website, nor anyone

associated with Knix Wear, utilizes every element of any claim in the '508 Patent as is required for infringement.

68. Based on Landmark's First Letter, Second Letter, and the accusations of patent infringement contained therein, especially in light of Landmark's pattern of recent infringement litigation over the '508 Patent, and Knix Wear's denial of infringement, a substantial, immediate, and real controversy exists between Knix Wear and Landmark regarding whether Knix Wear directly or indirectly infringes or has infringed the '508 Patent. A judicial declaration is necessary to determine the parties' respective rights regarding the '508 Patent.

69. This controversy arises, in whole or in part, from Landmark's demand letters to Knix Wear claiming that Knix Wear infringes at least Claim 1 of the '508 Patent, and demanding Knix Wear pay for a license to the '508 Patent or be sued. Landmark's demand letters alone, and in combination with Landmark's known pattern and practice of filing patent infringement lawsuits against licensing targets that refuse to pay the license fee, clearly demonstrates Landmark's intent to seek to wrongfully enforce the '508 Patent against Knix Wear.

70. A judicial declaration that Knix Wear does not directly or indirectly infringe any valid and enforceable claim of the '508 Patent is necessary and appropriate so that Knix Wear may ascertain its rights regarding the '508 Patent and to prevent further injury to Knix Wear.

71. Knix Wear contends it does not infringe upon the '508 Patent and is entitled to a declaration so stating.

PRAYER FOR RELIEF

WHEREFORE, Knix Wear respectfully requests:

- a. A declaration that Knix Wear's services, systems, technology, and/or practices have not infringed and do not infringe, directly or indirectly, any valid and enforceable claim of the '508 Patent, whether literally or under the doctrine of equivalents;
- b. A declaration that the '508 Patent is invalid for failure to comply with the requirements of 35 U.S.C., including at least §§ 101, 102, 103 and/or 112;
- c. An order declaring that this is an exceptional case and awarding Knix Wear its costs, expenses, disbursements and reasonable attorneys' fees under 35 U.S.C. § 285; and
- d. That Knix Wear be granted such other further relief to which Knix Wear may be entitled as a matter of law or equity, or which the Court deems to be just and proper.

Dated: April 30, 2021

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/s/ Jonathan E. Schulz

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