IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Transcore, L.P.	:	
	:	
Plaintiff,	:	
	:	
Vs.	:	Civil Action No.
	:	
Mark IV Industries Corp.,	:	
	:	
Defendant.	:	

TO THE HONORABLE JUDGES OF THE UNITED STATES
DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Plaintiff, Transcore, L.P. (hereinafter referred to as "Transcore"), by and through its attorneys, complain as follows:

PARTIES

1. Transcore is a corporation organized and existing under the laws of the State of Delaware with a principal place of business at 8158 Adams Drive, Hummelstown, Pennsylvania 17036 and does business throughout the Commonwealth of Pennsylvania and within this judicial district.

2. Defendant, Mark IV Industries Corp., (hereinafter referred to as "Mark IV") is a Canadian corporation having a principal place of business at 6020 Ambler Drive, Mississauga, Ontario, Canada L4W 2P1. Upon information and belief, Mark IV does business within this judicial district.

3. This is a suit for a declaratory judgment of invalidity and non-infringement of United States Patent Nos. 5,164,732; 5,192,954; 5,196,846 and 6,219,613 (hereinafter referred to as "The Patents").

JURISDICTION

4. This action arises under the patent laws of the United States, Title 35 United States Code, § 1 et seq.

5. This Court has original and exclusive jurisdiction 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, Title 35 United States Code, § 1 et seq.

6. This Court has jurisdiction of this matter under the Declaratory Judgment Act, Title 28, U.S.C. §§ 2201 and 2202, as this suit is for a declaration that Transcore has not infringed The Patents and that The Patents are invalid under Title 35, United States Code, including but not limited to §§ 102, 103 and 112.

DECLARATION OF NONINFRINGEMENT AND INVALIDITY

7. Transcore has a well-grounded fear and apprehension that it will have to defend a patent infringement suit brought by Mark IV for infringement based on the patents. In fact, Mark IV has filed such a suit in the District of Delaware, Mark IV Industries Corp. v. Transcore Holdings, Inc., Civil Action No. 09-418 alleging infringement by Transcore's making, selling and/or offering for sale Encompass® 4, 5 or 6 Readers, Encompass® IAG PNP Reader System, eZGo™ Anywhere Standard On-Board units and all similar products (hereinafter the "Accused Devices").

8. Mark IV claims to be the assignee of all right, title and interest in and to The Patents, including all rights to bring suit thereunder.

9. On or about May 20, 2009, Mark IV notified Transcore, via a letter from Mark IV's President to Transcore (attached hereto as Exhibit A), that Transcore's introduction of its

Encompass 6 multi-protocol reader, as it is installed, infringes one or more of Mark IV's patents. Transcore's counsel identified four (4) patents which relate to the subject matter; namely The Patents.

10. In a letter dated May 21, 2009 (attached hereto as Exhibit B), counsel for Transcore requested that Mark IV identify the patents infringed and the particular claims alleged to be infringed.

11. On May 29, 2009, counsel for Mark IV identified three (3) of The Patents; U.S. Patent Nos. 5,164,732; 5,196,846; and 6,219,613. (See Exhibit C)

12. Transcore has expended great sums of resources designing, developing, manufacturing, distributing, and/or selling its Accused Devices.

13. As a result of the letter of May 20, 2009 from Mark IV's President, Transcore has a well-grounded fear and apprehension that it will have to defend a patent infringement suit brought by Mark IV for alleged infringement of the patents.

14. Mark IV has not only advised Transcore of the alleged infringement, but has also published a notice to the industry of the infringement allegations and has now filed in the United States District Court for the District of Delaware a suit for infringement of three of The Patents, as set forth in paragraph 7.

COUNT I
THE PATENTS OF MARK IV ARE NOT INFRINGED

15. U.S. Patent No. 5,164,732 (the "'732 Patent") is not infringed because each of the first 21 claims of this patent contains elements limiting the claims to apparatus and systems having antennas embedded in a roadway. None of the Accused Devices have or operate with antennas embedded in a roadway. The remaining Claim 22 is also not infringed because the

Accused Devices do not perform the step of determining that "said first lane traveled by said vehicle is said first lane, when said first monitoring step receives said first return signal during said first information interval" as required by Claim 22.

16. U.S. Patent No. 5,192,954 (the "'954 Patent") is not infringed by the Accused Devices. Claims 1-8 and 16-17 are not infringed because they are limited to antennas embedded in a roadway, as set forth above. None of the Accused Devices contain or operate with roadway embedded antennas. Claim 9, which is the only independent claim of the '954 Patent, and does not have a limitation requiring an embedded antenna, is not infringed because the Accused Devices do not have "an antenna array generally extending over said roadway and above said vehicles. " Claim 9 is also not infringed because it includes means plus function terms, namely "means electrically coupling said interrogator and array for transmitting radio frequency signals therebetween, " and the Accused Devices have a different non-equivalent structure than the means disclosed in the patent.

17. U.S. Patent No. 5,196,846 (the "'846 Patent) is not infringed by any of the Accused Devices. Claims 1 and 8 are not infringed because they include a "means-plus-function" element, namely, the "storage means." The Accused Devices do not infringe Claim 1 because they do not include the structural equivalent of the storage means (i.e., memory) that is disclosed in the '846 Patent. With respect to independent Claims 6 and 13, the claims require a "means for receiving a third data message by said antenna means and for determining from the content of said third data message, the proper operation by said transponder in response to said second data message." The Accused Devices do not determine the proper operation of a tag based upon what it reads from the tag in response to what is sent to the tag. Claim 7 and Claim14 require a storage means, which is a "means-plus-function" element, and the Accused Devices do

not include the structural equivalent of the storage means (i.e., memory) that is disclosed in the '846 Patent.

18. U.S. Patent No. 6,219,613 (the "'613 Patent") is not infringed because independent Claims 1 and 15 both require "processing means", which are "means-plus-function" elements and the Accused devices do not have equivalent structure to the processing means disclosed in the '613 Patent. The remaining independent Claim 18, which is a method claim, requires the steps of "transmitting", "counting" and "determining", which are "steps-plus-function" limitations and the Accused Devices do not contain the structure or provide the acts disclosed in the '613 Patent, or their equivalents for performing such functions.

COUNT II
THE PATENTS OF MARK IV ARE INVALID

19. The '732 Patent is invalid for at least the following reasons: The claims of the patent are obvious under 35 U.S.C. §103 on the basis of an article entitled "VECOM short-range communication with vehicles", by Nicholas van Tol et al. (Phillips Telecommunication Rev. Sept. 1983), U.S. Patent No. 4,912,471 of Tyburski and a published thesis entitled Automatic Vehicle Identification for Road Traffic Monitoring by Nicholas D. Ayland, BSC, which was submitted to the University of Nottingham for the Degree of Doctor of Philosophy in September, 1989 (the "Ayland Thesis") and the public uses described therein. In addition, the '732 Patent is invalid under 35 U.S.C. §112 for insufficient disclosure.

20. The '954 Patent is invalid because the claims are made obvious under 35 U.S.C. §103 by U.S. Patent No. 5,128,669 to Dadds. In addition, Patent No. 5,192,954 is invalid under 35 U.S.C. §112 for insufficient disclosure.

21. The '846 Patent is invalid because the claims are obvious under 35 U.S.C. §103 in light of U.S. Patent No. 5,030,807 (Landt), U.S. Patent No. 4,303,904 (Chasek) and U.S. Patent No. 5,055,659 (Hendrick). The '846 is also invalid under 35 U.S.C. §112 for insufficient disclosure.

22. The '613 Patent is invalid as anticipated under 35 U.S.C. §102 by the Ayland Thesis. In addition, the public use described in the Ayland Thesis further anticipates the claims of the '613 Patent. The claims of the '613 patent are further invalid under 35 U.S.C. §103 based upon U.S. Patent No. 6,025,799 (Ho); U.S. Patent No. 4,864,158 (Koelle) and U.S. Patent No. 3,626,413 (Zachman). In addition, the '613 Patent is invalid under 35 U.S.C. §112 for insufficient disclosure.

COUNT III
INFRINGEMENT OF THE MARK IV PATENTS IS BARRED BY THE DOCTRINE OF LACHES

23. Any claim for patent infringement by Mark IV based upon The Patents is barred by the Judicial Doctrine of Laches.

24. Mark IV has been aware of Plaintiff's Accused Devices since at least as early as 2003, six years prior to the filing of the Complaint filed in the U.S. District Court for the District of Delaware. Accordingly, Mark IV is barred from now asserting the patents.

WHEREFORE, Transcore prays that this Court:

(a) adjudge and declare that the claims of U.S. Patent Nos. 5,164,732; 192,954; 5,196,846; and 6,219,613 have not been infringed and are not being infringed by Transcore;

(b) enjoin Mark IV from threatening to enforce and from enforcing U.S. Patent Nos. 5,164,732; 5,192,954; 5,196,846; and 6,219,613 against Transcore;

(c) adjudge that U.S. Patent Nos. 5,164,732; 5,192,954; 5,196,846; and 6,219,613 are invalid under the Patent Laws of the United States;

(d) adjudge and declare that this case is an exceptional case pursuant to 35 U.S.C. § 285;

(e) award Transcore its costs and attorneys fees; and

(f) award Transcore such other and further relief as this Court deems just and proper.

Respectfully submitted

June 19, 2009

By /MPokotilow/ MDP96

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