

FILED-CLERK
U.S. DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS 2007 DEC 28 PM 3: 15
SHERMAN DIVISION
TEXAS-EASTERN

American Microsystems Ltd., Inc. §
§
Plaintiff, §
§
v. §
§
WIAV Solutions, LLC §
§
Defendant, §
§

BY _____
Civil Action No. 4:07cv589
Schneider/Bush

DECLARATORY JUDGMENT COMPLAINT

Plaintiff American Microsystems Ltd., Inc. alleges:

1. This is an action for declaratory judgment, brought under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, and under the Patent Laws of the United States, 35 U.S.C. § 271 *et seq.*

PARTIES

2. Plaintiff American Microsystems Ltd., Inc (“American”) is a Texas Corporation with its principal place of business at 2190 Regal Parkway, Euless, Texas 76040.

3. Defendant is WIAV Solutions, LLC (“Defendant”) and, on information and belief, is a foreign corporation.

JURISDICTION AND VENUE

4. Subject matter jurisdiction is proper in this Court under 28 U.S.C. §§ 2201, 2202, 1331, 1332, and 1338. Further, the Court has personal jurisdiction over the Defendant as the Defendant has, on information and belief, actively and purposely done business in Texas, availed

itself of the privilege of doing business within the State of Texas, and thereby subjected itself to suit in the State of Texas.

5. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to this claim occurred in this district, a substantial part of the property that is the subject of the action is situated in this district, and because American's damages have occurred, or are likely to occur, in this district.

STATEMENT OF FACTS

6. American is an information technology company specializing in providing wireless data collection and transmittal products and services. American employs 31 people and is based in Euless Texas. American sells a variety of products and services including, but not limited to, wireless hand-held bar-code readers ("terminals") which are used to scan bar-codes on products and cartons, primarily in warehouse facilities, collecting and transmitting the information to central computers for inventory control, warehousing, and real time manufacturing-floor or transportation information processing. American has developed goodwill, recognition, and a favorable reputation in its business. On information and belief, Defendant has no manufacturing, technology or production facilities, but, rather, is a company that purportedly owns patents it has collected and whose only business revenue is generated by suing alleged infringers of those patents and negotiating license fees from its victims.

7. On or about 15 October 2007, American received a letter at its offices from counsel for Defendant, claiming that Defendant is the owner of U.S. Patents No. 5,400,338 (the '338 patent) and No. 6,480,497 (the '497 patent) and further suggesting patent infringement by American.

Specifically, the letter stated, in its second and last paragraph as follows:

“WIAV is offering to license these patents to companies, such as yours, which make, sell, offer for sale, or import electronic devices (e.g. laptop computers) which implement wireless technology (e.g. WiFi) covered by WIAV’s patent portfolio. After you have had an opportunity to consider this matter, WIAV would like to meet with you to discuss licensing terms. While WIAV takes seriously any unlicensed practice of WIAV’s patent right, WIAV is offering generous terms for those companies which finalize licenses by the end of the year.”

8. On or about 24 November 2007, American received another letter from Defendant, through its counsel, referring to the previous letter (but stating an incorrect date), again referencing the specific U.S. patents cited in the first letter, and indicating a renewed willingness to license the patents. However, the second letter went on, stating that "WIAV welcomes the opportunity to engage in discussions with [American]" and indicating that WIAV hoped that it and American could "reach a mutually beneficial business *resolution of these issues*."

9. Based upon the two letters collectively (a) referring repeatedly to specific patents by number, (b) referring to Defendant's mental state of taking "seriously any unlicensed practice of [Defendant's alleged] patent rights" and (c) referring to the existence of "issues" requiring "resolution" soon, there now exists an actual controversy and a likelihood of litigation as to the issues of the validity, alleged infringement and enforceability of patents it has been accused of infringing, as well as Defendant’s purported right to enforce the asserted patents.

COUNT ONE - DECLARATORY JUDGMENT

10. An actual controversy has arisen and now exists between the parties relating to the purported validity, enforceability and alleged infringement of U. S. Patent No. 5,400,338 and No. 6,480,497. American contends that no such infringement has occurred, and that it has rights to use the technology now in its devices as referenced herein, and otherwise. American, on information and belief, also contends that, if Defendant owns the patents referenced, they are invalid and unenforceable.

11. A declaratory judgment is necessary in order that American can continue to offer its products and services under its name and business practices without fear of being unjustly accused of and sued for patent infringement by the Defendant.

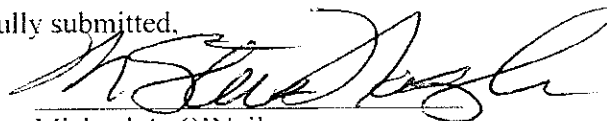
JURY DEMAND

12. American requests a jury trial of all issues in this action so triable.

WHEREFORE, American prays for a declaratory judgment against the Defendant:

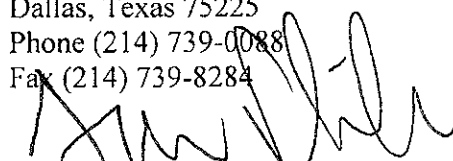
- a. That American has not infringed Defendant's alleged Patents and that Plaintiff's patents are invalid or unenforceable;
- b. Awarding American its costs, expenses, and attorneys' fees; and
- c. For such other and further relief as the Court deems just and proper.

Respectfully submitted,



Michael A. O'Neil
Texas Bar No. 15285000
M. Steve Nagle
Texas Bar No. 14779200
Jason Wietjes
Texas Bar No. 24022154

MICHAEL A. O'NEIL, P.C.
5949 Sherry Lane, Suite 820
Dallas, Texas 75225
Phone (214) 739-0088
Fax (214) 739-8284



Lawrence A. Phillips
Texas Bar No. 15937755

SIEBMAN, REYNOLDS, BURG,
& PHILLIPS, L.L.P.
300 N. Travis Street
Federal Courthouse Square.
Sherman, TX 75090.
Phone (903) 870-0070.
Fax (903) 870-0066