

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

OPTIUM CORPORATION)
)
 Plaintiff,)
)
 vs.)
)
 EMCORE CORPORATION,)
 JDS UNIPHASE CORPORATION)
)
 Defendants.)

C.A. NO. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Optium Corporation (“Optium”) as and for its Complaint against defendants Emcore Corporation and JDS Uniphase Corporation (collectively “Defendants”), hereby demand a trial by jury and allege as follows:

INTRODUCTION

1. This is a suit for declaratory judgment arising out of a patent dispute between Optium and Defendants. Defendants have accused Optium of infringing United States Patent No. 6,519,374 (the ‘374 patent or the “patent-in-suit”) (attached as Exhibit A) and have unsuccessfully sought to bring suit against Optium in the Western District of Pennsylvania. Optium denies liability on the patent-in-suit due to non-infringement. In short, there is a current, actual controversy between the parties that requires this Court’s intervention to declare that Optium is not infringing the patent-in-suit. As described below, Defendants’ conduct against

Optium has given rise to a reasonable apprehension on Optium's part that Defendants plan imminently to sue Optium for infringement of the patent-in-suit.

THE PARTIES

2. Plaintiff Optium is a Delaware corporation with its principal place of business at 200 Precision Drive, Horsham, PA 19044.

3. Defendant Emcore Corporation ("Emcore") is a New Jersey corporation with its principal place of business at 145 Belmont Drive, Somerset, New Jersey 08873.

4. Defendants JDS Uniphase Corporation ("JDSU") is a Delaware corporation with its principal place of business at 430 N. McCarthy Boulevard, Milpitas, California 95035.

JURISDICTION AND VENUE

5. This is an action pursuant to 28 U.S.C. § 2201 and § 2202 for a declaration of the rights of the parties with respect to an actual controversy concerning whether Optium is infringing a patent Defendants claim to own to and to have the right to assert.

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1338(a) for all claims herein arising under the United States Patent Act, 35 U.S.C. §§ 1 et seq., or in the alternative, pursuant to 28 U.S.C. § 1367(a), for any claims not so arising.

7. This Court has personal jurisdiction over Defendants based upon transaction of business in this district and JDSU's being a Delaware corporation.

8. Venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1391(b) and (c) because Defendants are subject to personal jurisdiction in this district

FACTS COMMON TO ALL COUNTS

9. On February 23, 2007, Defendants filed a Motion for Leave to Amend Complaint in a pending litigation between the parties in the Western District of Pennsylvania (Civil Action

No. 2:06-CV-01202). The Motion for Leave to Amend Complaint sought to add the '374 Patent to the already pending action.

10. Defendants' Amended Complaint included a count alleging the infringement of the '374 Patent by Optium's 1550 nm Quadrature Amplitude Modulated Transmitter.

11. The claims of the '374 Patent are not infringed by Optium's 1550 nm Quadrature Amplitude Modulated Transmitter.

12. On information and belief, further investigation will reveal that the claims of the '374 patent are invalid for failure to comply with one or more of the requirements of patentability set out in 35 U.S.C. § 101 et seq.

13. The Western District of Pennsylvania denied Defendants' Motion for Leave to Amend Complaint on March 14, 2007, noting that to "include an entirely new patent at this stage [of that case] would result in delay, not in the spirit of [that court's] L.P.R.s [Local Patent Rules]." (attached as Exhibit B).

14. Defendants' statements and conduct have given rise to a reasonable apprehension on Optium's part that Defendants plan imminently to sue Optium for infringement of the patent-in-suit.

COUNT I

15. Optium repeats and realleges the allegations set forth in paragraphs 1 through 13 as if fully set forth herein.

16. An actual controversy exists between the parties regarding the non-infringement of the '374 Patent.

17. Defendants have accused Optium of infringing the '374 Patent and have demanded from Optium monetary and injunctive relief.

18. Optium has not infringed any claim of the '374 Patent.

19. Optium is entitled to a declaratory judgment that Optium does not infringe any of the claims of the '374 Patent.

20. Optium is also entitled to a declaratory judgment that it is not obligated to pay Defendants any royalties, licensing revenue or other damages in connection with the '374 Patent.

WHEREFORE, Optium demands judgment against Defendants:

- (1) Adjudging and declaring that the claims of the '374 Patent are not infringed by Optium, and also that Optium is not obligated to pay Defendants any damages or royalties in connection with such patents;
- (2) Awarding Optium costs and attorneys' fees; and
- (3) Awarding Optium such other and further relief as this Court deems just and proper.

* * *

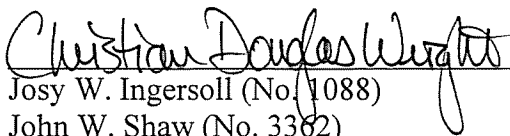
JURY TRIAL DEMAND

Optium hereby demands a trial by jury on all claims so triable.

Dated: March 15, 2007

Respectfully submitted,

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