

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
(MARTINSBURG DIVISION)**

FILED

FEB 02 2011

**US DISTRICT COURT
MARTINSBURG, WV 25401**

AUTOMATED MERCHANDISING
SYSTEMS INC.,

a Delaware corporation,

Plaintiff,

v.

VENDORS EXCHANGE INTERNATIONAL
INC.,

an Ohio corporation

Defendant.

Civil Action No. 3:11-CV-8

COMPLAINT

This Complaint for patent infringement is filed on behalf of Automated Merchandising Systems Inc. by counsel.

1. Plaintiff, Automated Merchandising Systems Inc. ("AMS"), is a corporation of the state of Delaware having its corporate headquarters and main place of business located at 255 West Burr Blvd., Kearneysville, West Virginia 25430.

2. Upon information and belief, defendant Vendors Exchange International, Inc. ("Vendors Exchange") is a corporation of the state of Ohio having its corporate headquarters at 4020 Payne Avenue, Cleveland, Ohio 44114.

3. This court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338 since the matter includes a controversy arising under an act of Congress relating to patents.

4. Venue is proper in this court under 28 U.S.C. § 1391(b-c) and 28 U.S.C. § 1400 because the defendant resides in this judicial district, and/or because a substantial part of the

events or omissions giving rise to the claim occurred in this judicial district. In addition, the defendant has transacted business in this district, and has committed, contributed to, and/or induced acts of patent infringement in this district. On information and belief, the defendant sells and offers to sell products at issue in this action in the district and the State, directly, indirectly and through intermediaries and/or agents. Upon information and belief, defendant has established a distribution network and placed products at issue in this action into the stream of commerce, using the distribution network, with the expectation and knowledge that some of those products would be sold in this judicial district and in this State.

5. The defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the West Virginia Long Arm Statute, due at least to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in West Virginia and in this judicial district.

6. On May 7, 2002, United States Patent No. 6,384,402 ("the '402 patent") was duly, properly, and legally issued and assigned to AMS. The '402 patent is valid and in full force and effect and products produced under the claims of that patent have enjoyed substantial commercial success and recognition in the trade. A copy of the '402 patent is attached hereto as Exhibit A.

7. On September 21, 2004, United States Patent No. 6,794,634 ("the '634 patent") was duly, properly, and legally issued and assigned to AMS. The '634 patent is valid and in full force and effect and products produced under the claims of that patent have enjoyed substantial commercial success and recognition in the trade. A copy of the '634 patent is attached hereto as Exhibit B.

8. On March 11, 2008, United States Patent No. 7,343,220 ("the '220 patent") was duly, properly, and legally issued and assigned to AMS. The '220 patent is valid and in full force and effect and products produced under the claims of that patent have enjoyed substantial commercial success and recognition in the trade. A copy of the '220 patent is attached hereto as Exhibit C.

9. Plaintiff AMS makes and sells glass-front snack vending machines equipped with an optical product vend detection system under the Sensit® trade name. AMS sells those vending machines through a nationwide network of independent distributors, dealers and/or resellers.

10. Defendant Vendors Exchange has offered, and continues to offer, a retro-fit kit for existing glass-front snack vending machines, which retro-fit kit upgrades the performance of those vending machines to include an optical sensor to detect when a vend has occurred. Vendors Exchange has marketed, and continues to market, that retro-fit kit under the name "Vend Wizard." Defendant Vendors Exchange has offered, and continues to offer, a retro-fit replacement door for use on existing glass-front snack vending machines, which replacement door includes an optical sensor to detect when a vend has occurred. Defendant Vendors Exchange also has marketed, and continues to market, re-furbished glass-front snack vending machines which include an optical sensor to detect when a vend has occurred.

COUNT I – '402 PATENT INFRINGEMENT

11. AMS repeats the allegations of ¶¶ 1-10 of its Complaint as if set forth at length herein.

12. Vendors Exchange has been, and is, making, having made, offering for sale, selling, using and/or importing products (including its so-called "Vend Wizard" optical sensor

system, replacement doors equipped with that product, and refurbished glass-front snack vending machines equipped that product) which infringe at least one claim of the '402 patent. Vendors Exchange's infringement of this patent has been willful, wanton, egregious, and with total disregard for AMS' rights, and will continue unabated unless enjoined by this Court. Vendors Exchange's infringement is and has been direct, indirect, literal, by equivalents, through inducement, and/or by contributing to direct infringement by others.

13. AMS has been, and continues to be, damaged by Vendors Exchange's infringement of the '402 Patent. AMS will continue to be damaged by Vendors Exchange's conduct unless Vendors Exchange is enjoined by this Court.

COUNT II – '634 PATENT INFRINGEMENT

14. AMS repeats the allegations of ¶¶ 1-13 of its Complaint as if set forth at length herein.

15. Vendors Exchange has been, and is, making, having made, offering for sale, selling, using and/or importing products (including its so-called "Vend Wizard" optical sensor system, replacement doors equipped with that product, and refurbished glass-front snack vending machines equipped that product) which infringe at least one claim of the '634 patent. Vendors Exchange's infringement of this patent has been willful, wanton, egregious, and with total disregard for AMS' rights, and will continue unabated unless enjoined by this Court. Vendors Exchange's infringement is and has been direct, indirect, literal, by equivalents, through inducement, and/or by contributing to direct infringement by others.

16. AMS has been, and continues to be, damaged by Vendors Exchange's infringement of the '634 Patent. AMS will continue to be damaged by Vendors Exchange's conduct unless Vendors Exchange is enjoined by this Court.

COUNT III - '220 PATENT INFRINGEMENT

17. AMS repeats the allegations of ¶¶ 1-16 of its Complaint as if set forth at length herein.

18. Vendors Exchange has been, and is, making, having made, offering for sale, selling, using and/or importing products (including its so-called "Vend Wizard" optical sensor system, replacement doors equipped with that product, and refurbished glass-front snack vending machines equipped that product) which infringe at least one claim of the '220 patent. Vendors Exchange's infringement of this patent has been willful, wanton, egregious, and with total disregard for AMS' rights, and will continue unabated unless enjoined by this Court. Vendors Exchange's infringement is and has been direct, indirect, literal, by equivalents, through inducement, and/or by contributing to direct infringement by others.

19. AMS has been, and continues to be, damaged by Vendors Exchange's infringement of the '220 Patent. AMS will continue to be damaged by Vendors Exchange's conduct unless Vendors Exchange is enjoined by this Court.

WHEREFORE AMS demands:

(a) An injunction against defendant Vendors Exchange enjoining it, its officers, directors, employees, agents, attorneys, and privies, and all those in active concert or participation therewith, from the continued infringement of the '402, '634 and '220 patents, pursuant to 35 U.S.C. § 283;

(b) An accounting, assessment and award of damages, not less than a reasonable royalty, and including prejudgment interest, adequate to fully compensate AMS for the infringement of the patents complained of herein, together with interest and costs as affixed by the Court, pursuant to 35 U.S.C. § 284;

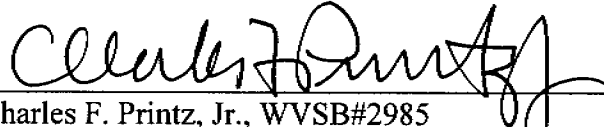
- (c) That any damage awarded pursuant to 35 U.S.C. § 284 be increased up to three times, as provided by 35 U.S.C. § 284, in view of defendants' willful infringement of the '402, '634, and '220 patents;
- (d) A finding that this is an exceptional case and an award to AMS of reasonable attorneys' fees due to the exceptional nature of this case, pursuant to 35 U.S.C. § 285;
- (e) An award to AMS of costs incurred in prosecuting this matter; and
- (f) Such other and further relief as this Court deems just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and the 7th Amendment to the Constitution of the United States, AMS demands a trial by jury of all issues triable as of right by jury in the above action.

Date: February 2, 2011

AUTOMATED MERCHANDISING SYSTEMS INC.
by its Attorneys


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