

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

---

ADVANCED CARD TECHNOLOGIES LLC,	)	
	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.:
	)	
BARRY FIALA, INC.,	)	
and BARRY FIALA,	)	
	)	
Defendants.	)	

---

**COMPLAINT FOR DECLARATORY RELIEF**

---

Advanced Card Technologies LLC (“ACT”) alleges for its complaint against Barry Fiala, Inc. and Barry Fiala as follows:

**PARTIES**

1. Plaintiff ACT is a limited liability company organized and existing under the laws of the State of New York, with its principal place of business in Suffern, New York.
2. Defendant Barry Fiala, Inc. is, on information and belief, a corporation organized under the laws of the State of Tennessee which has been dissolved and which can be served through its registered agent Peggy S. Vaughan, 8808 Featherleigh Lane, Germantown, Tennessee 38138, or its agent/principal Barry Fiala wherever he may be found.
3. Defendant Barry Fiala is an individual who, on information and belief, is a resident of the State of Tennessee who may be served at his residence 8808 Featherleigh Lane, Germantown, Tennessee 38138 or wherever he may be found.

**JURISDICTION AND VENUE**

4. The action seeks a declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. It presents an actual case or controversy under Article III of the United States Constitution and serves a useful purpose in clarifying and settling the legal rights at issue.

5. United States Patent Number 5,918,909 (“the ‘909 Patent”) entitled “Package for Card with Data-Encoded Strip and Method of Using Same” is owned, of record, by Barry Fiala, Inc. A true and correct copy of the ‘909 Patent is attached hereto as Exhibit A.

6. On information and belief, Barry Fiala, Inc. has been dissolved and terminated and ownership of the ‘909 Patent has devolved on Barry Fiala. Hereinafter, “Fiala” means the owner of the ‘909 Patent.

7. The ‘909 Patent constitutes a threat to licensees of patents owned by ACT and impedes the ability of ACT to license its patents and to collect and receive royalties. Upon information and belief, Fiala has accused several of ACT’s licensees of infringement of the ‘909 Patent.

8. ACT seeks a judgment against the owner of the ‘909 Patent that the ‘909 Patent does not cover certain products produced under license of patents owned by ACT and known as “One-Piece Cards”.

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and 2201, and 35 U.S.C. §1, et. seq.

10. Venue is appropriate in this district pursuant to U.S.C. §§ 1391 and 1400.

11. This Court has personal jurisdiction over Barry Fiala, Inc. (if such corporation still exists) and Barry Fiala.

### **FACTS**

12. ACT is the owner of United States Patent Numbers 5,720,158 entitled “Information Card Package” and 5,921,584 entitled “Card Display Package” (the “ACT Patents”). The sole business of ACT is licensing its patents to companies which produce, *inter alia*, One-Piece Cards.

13. “One Piece Cards” means a product comprising a card and a card carrier manufactured from a single substrate where the card and card carrier are die cut from the same substrate, where a perforation or point of weakening separates the card from the card carrier (such that the card can be easily detached from the card carrier without the aid of a tool), and where the card contains a magnetic stripe which has been personalized and encoded with information.

14. The Court has previously found claims 29 and 30 of the ‘909 Patent invalid. A true and correct copy of the court’s Order on Pending Motions is attached hereto as Exhibit “B”. No appeal of this decision has been filed and the time for filing an appeal has expired. None of the other claims of the ‘909 Patent cover One-Piece Cards.

15. Accordingly, there is an actual, substantial and continuing justiciable controversy between ACT and Fiala regarding the scope of coverage of the ‘909 Patent, specifically whether the One-Piece Cards are covered by any valid claim of the Patent.

### **CLAIM FOR RELIEF**

16. ACT incorporates by reference each and every allegation set forth in paragraphs 1 through 15 as if fully set forth herein.

17. No valid claim of the ‘909 Patent covers One-Piece Cards.

18. ACT is entitled to a declaratory judgment that no valid claim of the ‘909 Patent covers One-Piece Cards and that One-Piece Cards do not infringe the ‘909 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff ACT requests the Court to enter a declaratory judgment in its favor and against Fiala as follows:

- (a) An order entering judgment in favor of ACT and against Fiala;
- (b) An order declaring that One-Piece Cards do not infringe any valid claim of the '909 Patent;
- (c) An order awarding ACT its costs (including expert fees), disbursements, and reasonable attorney's fees incurred in this action, pursuant to 35 U.S.C. § 285; and
- (d) An order granting such further relief as is just and proper.

This 8th day of January, 2010.

Respectfully submitted,

s/ Glen G. Reid, Jr.

Glen G. Reid, Jr. (BPR #8184)

Matthew F. Jones (BPR #25825)

Wyatt Tarrant & Combs, LLP

1715 Aaron Brenner Drive, Suite 800

Memphis, TN 38120-4367

Telephone: (901) 537-1000

Fax: (901) 537-1010

greid@wyattfirm.com

mjones@wyattfirm.com

*Counsel for Advanced Card Technologies LLC*