

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)
SAP AG and SAP AMERICA, INC.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
OZRO, INC., a Delaware Corporation,	)
and CROSS ATLANTIC CAPITAL	)
PARTNERS, INC., a Delaware	)
Corporation,	)
	)
Defendants.	)
_____	)

**PLAINTIFFS’ COMPLAINT FOR DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT, INVALIDITY, UNENFORCEABILITY, AND OWNERSHIP OF  
U.S. PATENT NOS. 6,141,653, 6,336,105, 6,338,050, 7,149,724, AND 7,162,458**

SAP AG and SAP America, Inc. (collectively “SAP”) file this Declaratory Judgment Complaint against Ozro, Inc. (“Ozro”) and Cross Atlantic Capital Partners, Inc. (“Cross Atlantic”) and for their causes of action state the following.

**PRIOR RELATED CASE IN THIS DISTRICT**

This case is related to *Sky Technologies, LLC v. Ariba, Inc.*, No. 1:06-cv-11889-WGY (D. Mass., filed October 17, 2006) (“*Sky v. Ariba*”), which involved the same patents-in-suit and was assigned to the Honorable Judge William G. Young prior to its dismissal on January 1, 2008.

**THE PARTIES**

1. Plaintiff SAP AG is a corporation organized and existing under the laws of Germany with its corporate headquarters and principal place of business at Dietmar-Hopp-Allee 16, 69190 Walldorf, Germany.

2. Plaintiff SAP America, Inc. is a corporation organized and existing under the laws of Delaware with its principal place of business at 3999 West Chester Pike, Newtown Square,

Pennsylvania 19073.

3. Upon information and belief, (a) defendant Ozro is a dissolved Delaware corporation with its principal place of business in Massachusetts, (b) Ozro was previous known as TradeAccess, Inc. (“TradeAccess”), (c) November 30, 2007, Ozro filed a Certificate of Dissolution with the Delaware Secretary of State, and (d) Ozro can be sued because under 8 Del. C. § 278, for the purposes of prosecuting or defending suit, a Delaware corporation continues to exist for three years from the date of dissolution.

4. Upon information and belief, defendant Cross Atlantic is a corporation organized and existing under the laws of Delaware with its principal place of business at Five Radnor Corporate Center Suite 555, 100 Matsonford Road, Radnor, Pennsylvania 19087.

#### **JURISDICTION AND VENUE**

5. This action arises under the patent laws of the United States, Title 35 of the United States Code. This court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

#### **THE DISPUTE**

7. This dispute involves U.S. Patent Nos. 6,141,653 (“the ‘653 patent”), 6,336,105 (“the ‘105 patent”), 6,338,050 (“the ‘050 patent”), 7,149,724 (“the ‘724 patent”), and 7,162,458 (“the ‘458 patent”) (collectively “the patents-in-suit”). Attached hereto as Exhibits A-E are true and correct copies of the ‘653, ‘105, ‘050, ‘724, and ‘458 patents.

8. Upon information and belief, on December 10, 1998, co-inventors David Foucher and Daniel Foucher assigned their entire right, title, and interest in the patent applications that would issue as the ‘653, ‘724, and ‘458 patents to TradeAccess.

9. Upon information and belief, on December 23, 1998, co-inventors David Foucher and Daniel Foucher assigned their entire right, title, and interest in the patent applications that would issue as the ‘105 and ‘050 patents to TradeAccess.

10. Upon information and belief, on December 23, 1998, co-inventor Jeffrey Conklin

assigned his entire right, title, and interest in the patent applications that would issue as the patents-in-suit to TradeAccess.

11. Upon information and belief, on March 19, 2001, co-inventor William Flanagan assigned his entire right, title, and interest in the patent applications that would issue as the '724 and '458 patents to TradeAccess.

12. Upon information and belief, on April 3, 2001, Cross Atlantic, either in its individual capacity, or as an agent for Cross Atlantic Technology Fund, L.P. ("CATF"), Co-Investment 2000 Fund, L.P. ("CI 2000"), and 3i Technology Partners, L.P. ("3i"), as part of an Intellectual Property Security Agreement ("the IP Agreement"), was granted a security interest in all right, title, and interest in the '653 patent and the patent applications that would issue as the '105, '050, '724, and '458 patents by TradeAccess.

13. Upon information and belief, Cross Atlantic, either in its individual capacity, or as an agent for CATF, CI 2000, and 3i, filed multiple Uniform Commercial Code forms related to the IP Agreement with the Massachusetts Secretary of State.

14. Upon information and belief, on May 3, 2001, TradeAccess changed its name to Ozro.

15. Upon information and belief, Cross Atlantic is an investor and shareholder in Ozro.

16. Upon information and belief, Ozro purportedly defaulted on its obligations under the IP Agreement.

17. Upon information and belief, on June 4, 2003, Cross Atlantic, either in its individual capacity, or as an agent for CATF and CI 2000, entered into an agreement with Jeffrey M. Conklin to purchase and sell the patents-in-suit to an entity that Mr. Conklin was to organize.

18. Upon information and belief, on July 14, 2003, Cross Atlantic purportedly conducted a foreclosure sale of its security interest by public auction and purportedly purchased all right, title, and interest in the patents-in-suit.

19. Upon information and belief, despite Cross Atlantic's winning bid at its July 14,

2003 foreclosure sale, Ozro did not sign any written instrument assigning its right, title, and interest in the patents-in-suit to Cross Atlantic.

20. Upon information and belief, Cross Atlantic did not secure a Massachusetts court order compelling Ozro to assign the patents-in-suit to Cross Atlantic.

21. Upon information and belief, on July 22, 2003, Cross Atlantic, despite having failed to secure a written assignment to the patents-in-suit from Ozro, purportedly assigned all right, title, and interest in the patents-in-suit to Whitelight Technology LLC (“Whitelight”), a corporation organized and existing under the laws of the Commonwealth of Massachusetts.

22. Upon information and belief, Mr. Conklin was the sole director of Whitelight.

23. Upon information and belief, Whitelight changed its name to Sky Technologies LLC (“Sky”).

24. Upon information and belief, Mr. Conklin is Sky and Ozro’s sole director.

25. On October 17, 2006, Sky sued SAP for patent infringement of the patents-in-suit in the United States District Court for the Eastern District of Texas, Marshall Division. *Sky Technologies LLC v. SAP AG, SAP Americas, Inc. and Oracle Corporation*, No. 2:06-cv-00440-DF (“*Sky v. SAP*”). This action is currently pending before the Honorable Judge David Folsom.

26. On January 4, 2008, SAP moved to dismiss Sky’s suit on the basis that Sky does not own the patents-in-suit. Because Cross Atlantic failed to secure a written assignment to the patents-in-suit from Ozro, under 35 U.S.C. § 261, Ozro still owns the patents-in-suit.

27. SAP’s motion to dismiss is still pending. On March 20, 2008, following oral argument on SAP’s motion to dismiss, Judge Folsom issued an order requesting supplemental briefing on the issue of Sky’s standing. Attached hereto as Exhibit F is a true and correct copy of Judge Folsom’s order.

28. In responsive pleadings to SAP motion to dismiss, Ozro’s counsel has threatened to sue SAP for patent infringement in the event that SAP’s motion to dismiss is granted:

- “Ozro is prepared to ***immediately file*** exactly the same lawsuit, against the same parties, before the same court.”

(*Sky v. SAP*, No. 2:06-cv-00440-DF, Sky's Sur-Reply to SAP's Motion to Dismiss, Docket No. 171 at 3 (emphasis added))

- "Were SAP to succeed, Ozro would file the same suit against SAP as part of its corporate wind-up activities."

(*Sky v. SAP*, No. 2:06-cv-00440-DF, Sky's Supplemental Briefing Regarding Defendant's Motion to Dismiss, Docket No. 198 at 2 n.1)

29. Ozro has also sought to intervene in *Sky v. SAP*.

30. SAP seeks a determination of the current and proper owner of the patents-in-suit, along with a declaration that the patents-in-suit are not infringed, invalid, and unenforceable.

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment of Non-infringement, Invalidity, and/or Unenforceability of U.S. Patent No. 6,141,653)**

31. SAP incorporates the allegations in paragraphs 1 through 30 above.

32. Ozro claims that the '653 patent is valid and enforceable and that SAP infringes the '653 patent.

33. SAP reasonably apprehends suit by Ozro for infringement of the '653 patent.

34. SAP contends that it does not and has not infringed, contributorily infringed, or induced infringement of any valid claim of the '653 patent.

35. Insofar as SAP is determined to infringe, contributorily infringe, or induce infringement of any claim of the '653 patent, SAP contends that said claim is invalid and unenforceable under one or more of 35 U.S.C. §§ 41, 101, 102, 103, 112, 116, 282 and/or for inequitable conduct.

36. Accordingly, a valid and justiciable controversy has arisen and exists between SAP and Ozro. SAP seeks a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**SECOND CAUSE OF ACTION**  
**(Declaratory Judgment of Non-infringement, Invalidity, and/or Unenforceability of**  
**U.S. Patent No. 6,336,105)**

37. SAP incorporates the allegations in paragraphs 1 through 36 above.

38. Ozro claims that the '105 patent is valid and enforceable, and that SAP infringes the '105 patent.

39. SAP reasonably apprehends suit by Ozro for infringement of the '105 patent.

40. SAP contends that it does not and has not infringed, contributorily infringed, or induced infringement of any valid claim of the '105 patent.

41. Insofar as SAP is determined to infringe, contributorily infringe, or induce infringement of any claim of the '105 patent, SAP contends that said claim is invalid and unenforceable under one or more of 35 U.S.C. §§ 41, 101, 102, 103, 112, 116, 282 and/or for inequitable conduct.

42. Accordingly, a valid and justiciable controversy has arisen and exists between SAP and Ozro. SAP seeks a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**THIRD CAUSE OF ACTION**  
**(Declaratory Judgment of Non-infringement, Invalidity, and/or Unenforceability of**  
**U.S. Patent No. 6,338,050)**

43. SAP incorporates the allegations in paragraphs 1 through 42 above.

44. Ozro claims that the '050 patent is valid and enforceable, and that SAP infringes the '050 patent.

45. SAP reasonably apprehends suit by Ozro for infringement of the '050 patent.

46. SAP contends that it does not and has not infringed, contributorily infringed, or induced infringement of any valid claim of the '050 patent.

47. Insofar as SAP is determined to infringe, contributorily infringe, or induce

infringement of any claim of the '050 patent, SAP contends that said claim is invalid and unenforceable under one or more of 35 U.S.C. §§ 41, 101, 102, 103, 112, 116, 282 and/or for inequitable conduct.

48. Accordingly, a valid and justiciable controversy has arisen and exists between SAP and Ozro. SAP seeks a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**FOURTH CAUSE OF ACTION  
(Declaratory Judgment of Non-infringement, Invalidity, and/or Unenforceability of  
U.S. Patent No. 7,149,724)**

49. SAP incorporates the allegations in paragraphs 1 through 48 above.

50. Ozro claims that the '724 patent is valid and enforceable, and that SAP infringes the '724 patent.

51. SAP reasonably apprehends suit by Ozro for infringement of the '724 patent.

52. SAP contends that it does not and has not infringed, contributorily infringed, or induced infringement of any valid claim of the '724 patent.

53. Insofar as SAP is determined to infringe, contributorily infringe, or induce infringement of any claim of the '724 patent, SAP contends that said claim is invalid and unenforceable under one or more of 35 U.S.C. §§ 41, 101, 102, 103, 112, 116, 282 and/or for inequitable conduct.

54. Accordingly, a valid and justiciable controversy has arisen and exists between SAP and Ozro. SAP seeks a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**FIFTH CAUSE OF ACTION**  
**(Declaratory Judgment of Non-infringement, Invalidity, and/or Unenforceability of**  
**U.S. Patent No. 7,162,458)**

55. SAP incorporates the allegations in paragraphs 1 through 54 above.

56. Ozro claims that the '458 patent is valid and enforceable, and that SAP infringes the '458 patent.

57. SAP reasonably apprehends suit by Ozro for infringement of the '458 patent.

58. SAP contends that it does not and has not infringed, contributorily infringed, or induced infringement of any valid claim of the '458 patent.

59. Insofar as SAP is determined to infringe, contributorily infringe, or induce infringement of any claim of the '458 patent, SAP contends that said claim is invalid and unenforceable under one or more of 35 U.S.C. §§ 41, 101, 102, 103, 112, 116, 282 and/or for inequitable conduct.

60. Accordingly, a valid and justiciable controversy has arisen and exists between SAP and Ozro. SAP seeks a judicial determination and declaration of the respective rights and duties of the parties. Such a determination and declaration is necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**SIXTH CAUSE OF ACTION**  
**(Declaratory Judgment of Ownership of**  
**U.S. Patent Nos. 6,141,653, 6,336,105, 6,338,050, 7,149,724, AND 7,162,458)**

61. SAP incorporates the allegations in paragraphs 1 through 60 above.

62. Upon information and belief, Ozro owns the patents-in-suit.

63. Upon information and belief, Cross Atlantic did not secure a written assignment to the patents-in-suit from Ozro.

64. Accordingly, a valid and justiciable controversy has arisen and exists between SAP, Ozro, and Cross Atlantic. SAP seeks a judicial determination and declaration of the current and proper owner of the patents-in-suit. Such a determination and declaration is



necessary and appropriate at this time in order that the parties may ascertain their respective rights and duties.

**PRAYER FOR RELIEF**

Wherefore, SAP requests that the Court enter judgment in its favor and against Ozro and Cross Atlantic as follows:

- a. Declaring that Ozro owns the patents-in-suit;
  - b. Declaring that SAP has not and does not infringe, contributorily infringe, or induce infringement of any claims of the patents-in-suit;
  - c. Declaring that the patents-in-suit are invalid and unenforceable;
  - d. Awarding SAP its costs and expenses of suit and attorney fees as allowed by law;
- and
- e. Granting SAP such other and further relief as the Court may deem proper.

Respectfully Submitted,

SAP AG AND SAP AMERICA, INC.  
By its attorneys,



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