

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

COXCOM, INC.)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
REMBRANDT TECHNOLOGIES, L.P.)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, CoxCom, Inc. (“CoxCom”), files this complaint for declaratory judgment relief against Defendant, Rembrandt Technologies, L.P. (“Rembrandt”), and avers as follows:

PARTIES

1. Plaintiff CoxCom is a corporation organized under the laws of the State of Delaware with its principal place of business at 1400 Lake Hearn Dr., Atlanta, GA 30319.

2. On information and belief, Rembrandt is a corporation organized under the laws of the State of New Jersey with its principal place of business at 401 City Avenue, Suite 185, Bala Cynwyd, PA 19004.

JURISDICTION AND VENUE

3. This action is for declaratory relief of non-infringement, invalidity and/or unenforceability of U.S. Patent No. 5,008,903 (the “‘903 Patent”) that arises under the United States patent laws (35 U.S.C. §§ 101, et seq.). The Court has subject matter jurisdiction over this action pursuant to the Declaratory Judgment Act (28 U.S.C. §§ 2201 and 2202) and 28 U.S.C. §§ 1331 and 1338.

4. This Court has general and specific personal jurisdiction over Rembrandt because Rembrandt transacts business within this judicial district, and has purposefully availed itself of the laws and protection of the courts in Delaware in filing a prior patent infringement action involving the '903 Patent in the United States District Court for the District of Delaware (C.A. No. 06-635-GMS). This action seeks a declaration that CoxCom has not infringed any valid claims of the '903 Patent.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) and (c) and 1400(b).

BACKGROUND

6. CoxCom is a cable service provider that offers various cable services to subscribers, including Cox® Cable, advanced digital video programming services under the Cox® Digital Cable brand, and local and long-distance telephone services under the Cox® Digital Telephone brand. CoxCom also offers high speed Internet access under the Cox® High Speed Internet brand.

7. Rembrandt is a company that invests in patents, but does not practice them. Instead, it acquires rights to patents and sues entities it believes infringe upon those patents.

8. Upon information and belief, Rembrandt maintains or is associated with a website at <http://www.rembrandtfund.com>. Exhibit A is a true and correct copy of excerpts from its website. According to its website, Rembrandt “shoulders the legal, financial, and business risks associated with pursuing patent pirates and provides the capital and expertise required to litigate complex patent infringements.” *Id.* To pursue such patent infringement litigation, Rembrandt maintains a “staff of in-house professionals and outside consultants” that “includes scientists, inventors, financial analysts, lawyers, and researchers who are expert at identifying the validity

and market value of patents and Intellectual Property (IP), and securing revenue for these inventors and companies as well as Rembrandt's investors." *Id.* Rembrandt claims to have raised \$150 million "to acquire patents and litigate patent infringement." *Id.*

9. In short, Rembrandt's business is to initiate lawsuits to enforce patent rights. Rembrandt is engaged in the enforcement of patents that it has acquired in a number of different industries. For example, in February 2006, Rembrandt initiated a patent suit against Sharp Corporation and Sharp Electronics Corporation in an action entitled *Rembrandt Technologies, L.P. v. Sharp Corporation and Sharp Electronics Corporation*, 2:06-CV-00047-TJW (E.D. Tex.). An apparent affiliate of Rembrandt, Rembrandt Vision Technologies, L.P., has also initiated a patent suit against Bausch & Lomb Incorporated and Ciba Vision Corporation, in an action entitled *Rembrandt Vision Technologies, L.P. v. Bausch & Lomb Incorporated and Ciba Vision Corporation*, Case No. 2:05-CV-00491-TJW (E.D. Tex.).

**REMBRANDT'S ENFORCEMENT CAMPAIGN AGAINST COXCOM AND OTHER
CABLE SERVICE PROVIDERS**

10. Rembrandt has expanded its enforcement efforts to target members of the cable industry, including CoxCom and its affiliates.

11. On June 1, 2006, Rembrandt filed a complaint in the United States District Court for the Eastern District of Texas, entitled *Rembrandt Technologies, L.P. v. Charter Communications, Inc., Charter Communications Operating, LLC, Cox Communications, Inc., CoxCom, Inc., Cox Enterprises, Inc., Cablevision Systems Corporation and CSC Holdings, Inc.*,¹ Case No. 2:06-CV-223 ("Texas Action"). A true and correct copy of the complaint filed in the Texas Action is attached as Exhibit B. The Texas Action alleges that defendants, including CoxCom, infringe multiple patents by operating digital cable systems in which they provide

cable television, high speed internet, and Voice over IP (VoIP) services to their subscribers. On October 16, 2006, Rembrandt dismissed Cablevision Systems Corporation and its affiliate CSC Holdings, Inc. without prejudice from the Texas Action.

12. On September 13, 2006, Rembrandt filed suit against Time Warner, in a case entitled *Rembrandt Technologies, L.P. v. Time Warner Cable, Inc.*, Case No. 2:06-CV-369 (“Time Warner Action”). A true and correct copy of the Time Warner complaint is attached hereto as Exhibit C. In the Time Warner Action, Rembrandt asserts infringement of several U.S. patents, including the ‘903 Patent. Rembrandt claims that Time Warner infringed “the ‘903 Patent by providing high speed cable modem internet products and services to subscribers.” *Id.* A true and correct copy of the ‘903 Patent is attached hereto as Exhibit D.

13. Rembrandt has also pursued its business of enforcing patent rights through litigation in Delaware. On October 13, 2006, Rembrandt filed a patent infringement action against Cablevision Systems Corporation, et al., that is entitled *Rembrandt Technologies, L.P. v. Cablevision Systems Corporation and CSC Holdings, Inc.*, Case No. 1:06-CV-00635-GMS (“Cablevision Action”). In the Cablevision Action, Rembrandt asserts a variety of patents, including the ‘903 patent. The present action relates to the Cablevision Action under D. Del. LR 3.1(b) because it at least involves the same patent.

14. Rembrandt filed the Cablevision Action in this Court. In addition to asserting against Cablevision the patents at issue in the Texas Action, Rembrandt also asserts that Cablevision has infringed the ‘903 Patent by providing high speed internet service to its subscribers. A true and correct copy of the complaint is attached hereto as Exhibit E.

THE CABLE INDUSTRY

15. The cable industry in which CoxCom operates is highly competitive and involves a number of companies that offer the same sorts of services that CoxCom offers its subscribers. However, because of the expense of research and development of the equipment necessary to provide a robust, fully-functional cable system, standards have been developed that apply to various cable services, including the provision of high speed internet access.

16. Cable Television Laboratories, Inc. ("CableLabs") is a nonprofit research and development consortium that helps develop and integrate new cable telecommunications technologies. Exhibit F is a true and correct copy of excerpts from the CableLabs' website. CableLabs supported the development of cable modems via promulgation of a standard known as the Data Over Cable Service Interface Specification ("DOCSIS®") standards. CableLabs' DOCSIS® specification "defines interface requirements for cable modems involved in high speed data distribution over cable television system networks," including internet access. *Id.* Further information regarding CableLabs and DOCSIS® may be found on the CableLabs Web site at www.cablelabs.com. CableLabs and cable companies like CoxCom require interoperability among DOCSIS® cable modems and other equipment.

17. There are a limited number of vendors capable of supporting and providing cable modems and other equipment for building the architecture necessary to offer new cable services like high speed internet. Cable companies like CoxCom, Cablevision or Time Warner Cable, Inc. ("Time Warner"), often utilize the same vendors because the cable modems and other equipment offered by such vendors are DOCSIS®-compliant.

DECLARATORY JUDGMENT COUNT

**(NONINFRINGEMENT, INVALIDITY AND/OR UNENFORCEABILITY OF
THE '903 PATENT)**

18. CoxCom restates and realleges the allegations set forth in paragraphs 1 through 17 above and incorporates them by reference.

19. By virtue of Rembrandt's actions against CoxCom and its affiliates, as well as Rembrandt's initiation of lawsuits against Cablevision and Time Warner asserting provision of high speed internet services infringes the '903 Patent, CoxCom is under a real and immediate apprehension of a lawsuit by Rembrandt alleging infringement of the '903 Patent in view of CoxCom's business of providing high speed internet services.

20. Upon information and belief, CoxCom, however, has not directly infringed, contributed to the infringement of, or actively induced the infringement of any claim of the '903 Patent, nor has it otherwise committed any acts of infringement of any rights of Rembrandt.

21. Upon information and belief, the claims of the '903 Patent are invalid under 35 U.S.C. §§ 102, 103 and/or 112.

22. Upon information and belief, any attempt by Rembrandt to enforce the '903 Patent would be barred by waiver, laches, estoppel or acquiescence and, therefore, the '903 Patent is unenforceable.

PRAYER FOR RELIEF

WHEREFORE, CoxCom prays for the following:

1. A judgment and declaration that CoxCom has not infringed and does not infringe in any manner any claim of the '903 Patent, directly, contributorily or by inducement, and has not otherwise infringed or violated any rights of Rembrandt.

2. A judgment that each claim in the '903 Patent is invalid and unenforceable.

3. An injunction against Rembrandt and its affiliates, subsidiaries, assigns, employees, agents or anyone acting in privity or concert with Rembrandt from charging infringement or instituting any legal action for infringement of the '903 Patent against CoxCom or anyone acting in privity with CoxCom, including the divisions, successors, assigns, agents, suppliers, manufacturers, contractors and customers of CoxCom.

4. A judgment and declaration that this is an exceptional case within the meaning of 35 U.S.C. § 285, entitling CoxCom to an award of its reasonable attorneys' fees, expenses and costs in this action.

5. A judgment for such other and further relief in law or in equity as this Court deems just or proper.

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/s/ Rodger D. Smith II

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