

The Honorable James L. Robart

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

QUIRING MONUMENTS, INC., a  
Washington Corporation

Plaintiff,

v.

MEMORY MEDALLION, INC., a  
Pennsylvania Corporation

Defendant.

Civil Action No. 11-cv-909 JLR

FIRST AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT OF  
PATENT NON-INFRINGEMENT AND  
FOR LANHAM ACT VIOLATIONS

JURY TRIAL REQUESTED

Plaintiff, Quiring Monuments, Inc. (“Quiring Monuments”), alleges, by and through its attorneys, as follows.

**PARTIES**

1. Quiring Monuments is a Washington Corporation having its principal place of business at 9608 Aurora Ave. North, Seattle, Washington 98103-3296.

2. On information and belief, defendant Memory Medallion, Inc. (“Memory Medallion”) is a Pennsylvania Corporation with a principal place of business at 61 North Richhill Street, Waynesburg, Pennsylvania 15370-1305.

**JURISDICTION**

3. This Complaint seeks a declaratory judgment that Quiring Monuments' Living Headstone™ memorial and other products which encode URLs into bar codes, do not infringe any claims of U.S. Pat. No. 7,395,960 (hereinafter "the '960 patent"), issued to Glen R. Toothman and assigned to Memory Medallion.

4. This Complaint further seeks a judgment against Memory Medallion under section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), because, on information and belief, Memory Medallion has, in bad faith, falsely stated that Quiring Monuments' Living Headstone™ memorial infringes one or more claims of the '960 Patent.

5. The Court has jurisdiction pursuant to 28 U.S.C. § 1338 (patents), 28 U.S.C. § 1331 (federal questions), and 28 U.S.C. §§ 2201 and 2202 (declaratory judgment actions).

6. The Court may exercise personal jurisdiction over Memory Medallion because, i.e., Memory Medallion, through its CEO, Toothman, subjected itself to the jurisdiction of Washington state when it directed into this state an accusation to Quiring Monuments of infringement of the '960 patent; and because Memory Medallion has purposely availed itself of the jurisdiction by doing business in Washington.

7. According to Memory Medallion's CEO Toothman, Memory Medallions has done business with Woodlawn Cemetery in Seattle Washington for the last two years.

**VENUE**

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred this judicial district.

**FACTUAL ALLEGATIONS AND BACKGROUND**

9. Bar codes are machine-readable optical data representations. Bar code readers can be built for the task of reading a specific kind of bar code, or more general purpose computers can be programmed to read bar codes. The bar code was invented in 1949, by Normand

1 Woodland and Bernard Silver. The inventors were granted U.S. Patent No. 2,612,994 for their  
2 invention.

3 10. The earliest widely-used, and still best-known, bar codes represent commercial  
4 product information through parallel lines of varying widths and spacing. These are commonly  
5 seen on groceries, for example, and any other product that can be read by a checkout scanner.  
6 Used on consumer products, the bar codes encode Universal Product Codes, or UPCs, and make  
7 it easy for retail computer systems to track prices and sales. These common bar codes are known  
8 as linear or 1 dimensional (1D) bar codes.

9 11. Bar codes have been used to encode, in a machine-readable format, other data  
10 than UPCs. Encoding more than merely a few digits of information was made easier by  
11 development of various bar codes which encode information in rectangles, dots, circles, and  
12 other geometric patterns in 2 dimensions, and are generally referred to as 2D barcodes.

13 12. With the advent of internet-based data storage and manipulation, many people  
14 have encoded website addresses, known as 'uniform resource locators' or URLs, in bar codes.

15 13. The wide development of consumer uses for the internet, combined with broad  
16 market penetration of smartphones, has made this old idea seem new to some. And the ever-  
17 wider availability of software to read certain kinds of 2D bar codes, which contain much more  
18 data than the well-known UPC code, has added to the impression of novelty for this old idea.

19 14. One bar code that seems new to America is the QR Code® bar code. QR Code®  
20 bar codes are a subset of 2D bar codes. "QR Code" is a registered trademark of Denso Wave,  
21 Inc., a Toyota subsidiary whose employees invented the QR Code® bar code around 1994. Denso  
22 Wave took steps to patent the bar code, and to have it established as an international standard  
23 before various bodies. The code was first established as an international standard in 1997 by the  
24 Association for Automatic Identification and Mobility International.

1           15.    The QR Code® bar code, and methods of reading it, are the subject of many  
2 patents owned by Denso. Examples include U.S. Patent Nos. 6,135,353; 6,360,948; 6,267,926;  
3 6,279,830; and 6,494,375.

4           16.    By June 2000, the QR Code® bar code was the subject of International Standards  
5 Organization standard ISO/IEC 18004.

6           17.    Denso does not enforce its patents to prevent use of the QR Code® bar code;  
7 indeed, it publicly promises it will not. As a result, the codes are available for use by anyone,  
8 and the code has become a widely used standard. It is found in signs, ads, music videos,  
9 literature, and art. It is commonly used to encode URLs so that viewers of the code can scan it  
10 and be directed to a website with information the creator of the code hopes will be viewed. U.S.  
11 Patent No. 5,938,727 to Ikeda discusses encoding URLs in QR Code® bar codes.

12           18.    QR Code® bar codes are widely used in Japan, and many handheld devices,  
13 especially smartphones, have built-in support for reading QR Code® bar codes. Because of the  
14 broad number of devices which can read QR Code® bar codes ‘out-of-the-box’ or with readily  
15 available add-ons software, QR Code® bar codes are spreading in the US as well.

16           19.    One of the most common uses for a QR Code® bar code is to encode a URL on an  
17 advertising sign, so that a passer-by with a properly equipped smartphone can scan the QR  
18 Code® bar code and identify the URL with more information about the product advertised. With  
19 an internet browser on the phone, the user can be instantly directed to the website.

20           20.    As the smartphone market has exploded, QR Code® bar codes encoding URLs  
21 have become more and more widely used. Examples now abound. Realtor® magazine recently  
22 published an article encouraging wider use of the URL-encoding QR Code® bar codes in signs  
23 and listings.

24           21.    Information regarding Denso Wave’s invention of the QR Code® bar code is  
25 readily available on the internet. For example, the first search result from Google for “QR Code”  
26 is the Wikipedia entry which plainly states “The use of QR codes is free of any license. The QR

code is clearly defined and published as an ISO standard. Denso Wave owns the patent rights on QR codes, but has chosen not to exercise them.”

([http://en.wikipedia.org/wiki/QR\\_code#License](http://en.wikipedia.org/wiki/QR_code#License)) (Accessed June 8, 2011.)

22. Wikipedia’s footnotes lead to the English language website of Denso Wave which states “For 2D Code to become widely used, it is first necessary for QR Code specification to be clearly defined and made public. In addition, QR Code must be freely usable by users. The background behind the popularity of bar codes is specification disclosure. Today, there are very few bar codes with closed specifications or strict patent protection. QR Code is open in the sense that the specification of QR Code is disclosed and that the **patent right owned by Denso Wave is not exercised.**” (<http://www.denso-wave.com/qrcode/qrcode-standard-e.html>, emphasis in original) (Accessed June 8, 2011.)

23. Denso Wave also identifies the numerous international standards bodies which have established standards for QR Code bar codes, as well as giving links to the standards.

24. The term “QR Code” is a registered trademark of Denso Wave Incorporated. See <http://www.denso-wave.com/qrcode/faqpatent-e.html>.

25. Quiring Monuments affixes these widely available and ‘open-source’ QR Code® bar codes with encoded URLs on headstones. When the headstone mounted QR Code® bar code is scanned by a smartphone such as an iPhone equipped with a QR Code® bar code decoder, the phone is directed to the website of that URL. The website will typically provide information of interest regarding the departed person.

26. Quiring Monuments markets this product feature as the Living Headstone™ memorial.

27. Importantly, the Living Headstone™ memorial does not contain or have attached to it any electronic device. Rather, the memorial has affixed to, or engraved directly on the stone, in an unobtrusive location, a QR Code® bar code. If and when a viewer of the memorial notices

1 and scans the QR Code® bar code, he or she can have a smartphone or other internet-accessing  
2 computer directed to a website associated with the URL encoded in the QR Code® bar code.

3 28. Memory Medallions, through its CEO, Toothman, has threatened, at least twice,  
4 to sue Quiring Monuments for its use of these open source bar codes.

5 29. CEO Toothman wrote Quiring Monuments:

6  
7 “I was a prosecuting attorney for 16 years prior to my creation of Memory  
8 Medallion. I have been active in litigation most all of my working life and am  
9 fully familiar with its processes and procedures even being elected by my  
10 community to serve as their District Attorney. In my decision to remove myself  
11 from this practice and market the Memory Medallion was based in the legitimate  
12 pursuit of intellectual property rights regarding claims implementing technology  
to this market. **I clearly spelled out in our Patent claims some ten years ago  
the use of bar code technology as a basis for retrieving graveside  
information.** This patent was granted in 2008 and we have been underway with  
its market.”

13 (Email from Toothman to quiringmonuments@monuments.com, sent May 31, 2011.) (Emphasis  
14 added.)

15 30. As discussed in detail below, no claim of the ‘960 Patent reads on encoding a  
16 URL in a QR Code® bar code, or any other bar code, regardless of where the bar code is  
17 subsequently affixed, including on headstones.

18 31. Memory Medallion instead procured a patent which reads on attaching electronic  
19 memory devices to headstones and other objects – the very memory devices it called “memory  
20 medallions” and after which the company is named.

#### 21 NON-INFRINGEMENT OF THE ASSERTED ‘960 PATENT

22 32. The ‘960 patent issued on July 8, 2008, with independent claims 1, 7, 13, 14, 18,  
23 19, and 20.

24 33. Every independent claim of the ‘960 patent includes at least one limitation not  
25 met by the use of publicly available QR Code® bar codes on headstones.  
26

1           34. Independent claim 1 of the '960 patent includes the limitation of "a memory  
2 device affixed to a physical object positioned at the cemetery location, the memory device being  
3 accessible to any public user, the memory device including a programmable random access  
4 memory . . ."

5           35. The Living Headstone™ memorial, with a QR Code® bar code encoding a URL,  
6 does not have a memory device affixed to a physical object positioned at the cemetery location,  
7 the memory device being accessible to any public user, the memory device including a  
8 programmable random access memory.

9           36. Independent claim 7 of the '960 patent includes the limitation of "a memory  
10 device affixed to a physical object positioned at the historically notable location, in a publicly  
11 accessible area, the memory device including a programmable random access memory . . ."

12           37. The Living Headstone™ memorial, with a QR Code® bar code encoding a URL,  
13 does not have a memory device affixed to a physical object positioned at the historically notable  
14 location, in a publicly accessible area, the memory device including a programmable random  
15 access memory.

16           38. Independent claim 13 of the '960 patent, a method claim, includes the limitations  
17 of "storing the information on a memory device having programmable random access memory,"  
18 and "affixing the memory device to a physical object positioned at the remote location . . ."

19           39. Use of the Living Headstone™ memorial, with a QR Code® bar code encoding a  
20 URL, does not include taking the steps of storing the information on a memory device having  
21 programmable random access memory, and affixing the memory device to a physical object  
22 positioned at the remote location.

23           40. Independent claim 14 of the '960 patent includes the limitation of "a memory  
24 device affixed to a physical object at the geographically remote and publicly accessible location,  
25 the memory device including a programmable random access memory . . ."

1           41.     The Living Headstone™ memorial, with a QR Code® bar code encoding a URL,  
2 does not have a memory device affixed to a physical object at the geographically remote and  
3 publicly accessible location, the memory device including a programmable random access  
4 memory.

5           42.     Independent claim 18 of the '960 patent includes the limitation of "a memory  
6 device affixed at the geographically remote and publicly accessible location, the memory device  
7 including a programmable random access memory . . ."

8           43.     The Living Headstone™ memorial, with a QR Code® bar code encoding a URL,  
9 does not have a memory device affixed at the geographically remote and publicly accessible  
10 location, the memory device including a programmable random access memory.

11           44.     Independent claim 19 of the '960 patent includes the limitation of "a memory  
12 device affixed to an object positioned in a remote and infrequently visited location, wherein said  
13 memory device is powered via a data line and includes a random access memory . . ."

14           45.     The Living Headstone™ memorial, with a QR Code® bar code encoding a URL,  
15 does not have a memory device affixed to an object positioned in a remote and infrequently  
16 visited location, wherein said memory device is powered via a data line and includes a random  
17 access memory.

18           46.     Independent claim 20 of the '960 patent includes the limitation of "a memory  
19 device affixed to a first object, wherein said memory device is powered via a data line and  
20 includes a random access memory for storing information relating to a second object, wherein  
21 said first object and said second object are positioned in a remote and infrequently visited  
22 location, but within proximity of each other . . ."

23           47.     The Living Headstone™ memorial, with a QR Code® bar code encoding a URL,  
24 does not have a memory device affixed to a first object, wherein said memory device is powered  
25 via a data line and includes a random access memory for storing information relating to a second  
26



object, wherein said first object and said second object are positioned in a remote and infrequently visited location, but within proximity of each other.

**ASSERTION OF THE '960 PATENT AGAINST QUIRING MONUMENTS BY MEMORY MEDALLIONS**

48. On April 27, 2011, a user identifying himself as Glen Toothman, CEO of Memory Medallion, the assignee of the '960 patent, accessed Quiring Monuments' website to submit the following assertion of infringement of the '960 patent by Quiring Monuments:

Full Name: Glenn Toothman  
Address: 61 N. Richhill St.  
City: Waynesburg  
State: PA  
Zip: 15370  
Phone Number: 724 627 8841  
Fax Number:  
Email Address: glenn@memorymedallion.com  
Comments:

Dear David:

Was surprised to read a recent article out of Seattle related to QR barcodes and tombstones. Please review our Patent 7395960 as we released such a product at the National Genealogy Conference in April of 2010 in Salt Lake and intend to defend our exclusive entitlement under this expensive and involved Patent process of securing this application. Given the numerous Associated Press articles and media attention we received about this release it would appear that not much effort was taken on your part to research the market. We have known about the Japanese application of the technology for sometime and did not seek IP protection in Japan but worked hard to procure it here in the US, Canada, Mexico and European countries. We will be pursuing our legal remedies if you elect to continue to market this product as we believe we have the Patent for this device. Glenn Toothman, CEO Memory Medallion Inc.

49. On May 31, 2011, quiringmonuments@monuments.com received the following email:

David:

I was a prosecuting attorney for 16 years prior to my creation of Memory Medallion. I have been active in litigation most all of my working life and am fully familiar with its processes and procedures even being elected by my community to serve as their District Attorney. In my decision to remove myself from this practice and market the Memory Medallion was based in the legitimate pursuit of intellectual property rights regarding claims implementing technology to this market. I clearly spelled out in our Patent claims some ten years ago the use of bar code technology as a basis for retrieving graveside information. This patent was granted in 2008 and we have been underway with its market. I have read in articles where you are quoted as saying that you did not know

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1 anyone else was doing this and more importantly you said you did not LOOK to see if  
 2 anyone else was doing this. My prior email notice to your company serving you notice of  
 3 our stating our claim, coupled with your recently failure to mention us as "others using  
 4 technology in deathcare markets" is clearly an indication to me of your dishonest  
 5 intentions here. You obviously have chosen to ignore my prior email correspondence  
 6 regarding our claim of the intellectual property right regarding the use of bar code  
 7 technology as it applies to the death care industry as you made no reply whatsoever and  
 8 my review of Patents or Patent applications regarding this technology makes no mention  
 9 of you or your compan. [sic] We have a thousands [sic] of our units in the market prior to  
 10 your "conception" of this product. As an example, Melissa Chapman from Woodlawn  
 11 Cemetery in your area has been working with us for nearly two years regarding our QR  
 12 product and she clearly has contact with others in your area regarding our QR product  
 13 long before your product launched and has been personally offended by your claims of  
 14 "invention." I am writing to make this very clear. I did not lightly leave my active  
 15 practice of law and invest my life savings in acquiring a Patent entitlement to allow you  
 16 to ignore our claims.. [sic] As stated previously, we intend to prosecute our entitlement to  
 17 the fullest and believe your unwillingness to acknowledge us in the course of your actions  
 18 is evidence of dishonest and unfair trade practices that we will bring to bare [sic] on our  
 19 claims.

12 Glenn Toothman, CEO, Founder  
 13 Memory Medallion Inc.  
 14 61 N. Richhill Street.  
 15 Waynesburg, PA 15370  
 16 m. 412.559.0537  
 17 glenn@memorymedallion.com

16 50. Quiring Monuments' Living Headstone™ was the subject of positive publicity on  
 17 NPR in late May 2011. That NPR story can be retrieved at  
 18 <http://www.npr.org/2011/05/30/136676964/technology-brings-digital-memories-to-grave-sites>.

19 51. On Tuesday, May 31, 2011, at 15:22:15, a user identifying himself as Glen  
 20 Toothman posted on NPR's comments on this story:

21  
 22 I am a longtime NPR listener and was surprised at this story. This is technology that our  
 23 company Patented and uses in this application long before Mr Quiring claims his recent  
 24 "novel" innovation. See [www.memorymedallion.com](http://www.memorymedallion.com) (see U.S. Patent 7395960) I am  
 25 sorry to know that not much research must have been done by NPR for determining the  
 26 merits of this story as we have been in this market space with this product... trying to do  
 it the right way... working years at pursuing and obtaining intellectual [sic] property rights  
 and then working to gain the market. He has no such entitlement related to this  
 application and we have alerted [sic] him accordingly.

**COUNT 1- REQUEST FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

52. Quiring Monuments incorporates by reference the allegations and factual statements contained in paragraphs 1 through 51 as if fully set forth herein.

53. There is a justiciable controversy between the parties as to whether Quiring Monuments has infringed any claims of the '960 patent.

54. Quiring Monuments is entitled to a declaratory judgment that it has not infringed any claims of the '960 patent.

**COUNT 2- LANHAM ACT VIOLATIONS**

55. Quiring Monuments incorporates by reference the allegations and factual statements contained in paragraphs 1 through 51 as if fully set forth herein.

56. There is no reasonable construction of the claims of the '960 Patent which reads on encoding a URL in a QR Code® bar code, regardless of where that bar code is then affixed.

57. Memory Medallion's accusation of infringement is false.

58. A single search of Google for "QR CODE" and review of the most readily available information demonstrates to anyone that the QR Code® bar code is open-source.

59. Review of the granted claims of the '960 Patent, especially by an experienced attorney such as Toothman describes himself to be, reveals that each claim requires random access memory.

60. A person who "was a prosecuting attorney for 16 years" and who has "been active in litigation most all of [his] working life and [is] fully familiar with its processes and procedures even being elected by [his] community to serve as their District Attorney" knows that a printed bar code, even a 2D bar code, is not a random access memory.

61. On information and belief, Toothman, an attorney, knows that encoding a QR Code® bar code with a URL does not infringe any claim of the '960 Patent, regardless of where the code is subsequently affixed.

62. On information and belief, Memory Medallion and Toothman made the allegations of infringement in bad faith.

63. Memory Medallion made a false or misleading statement of fact in commercial advertising or promotion about the Quiring Monument's goods or services, at least in its statements on NPR's website.

64. On information and belief, the statement actually deceives or is likely to deceive a substantial segment of the intended audience.

65. On information and belief, the deception is material in that it is likely to influence purchasing decisions.

66. Memory Medallions caused the statement to enter interstate commerce.

67. The statement results in actual or probable injury to Quiring Monuments.

68. Memory Medallion's false accusation of infringement is therefore an unfair trade practice under 15 U.S.C. § 1125(a).

#### REQUEST FOR RELIEF

WHEREFORE, Quiring Monuments requests the following relief:

- A. A declaratory judgment that the Living Headstone™ brand memorials, with an attached or engraved QR Code® bar code encoding a URL, and sold by Quiring Monuments, do not infringe any of the claims of the '960 patent;
- B. A preliminary and permanent injunction precluding Memory Medallions and its officers, agents, servants, employees, attorneys and any other person acting in concert or participation with such persons, who receive notice of the order, from representing or implying that the Living Headstone™ memorial with an attached or engraved QR Code® bar code encoding a URL, and sold by Quiring Monuments, infringe any claims of the '960 patent;
- C. An award of damages for Memory Medallion's violation of the Lanham Act, 15 U.S.C. § 1125(a);

- 1 D. An award of attorney's fees and costs pursuant to 35 U.S.C. § 285 or as otherwise  
2 permitted by law; and  
3 D. Such other relief as the Court deems just and proper.

4 **DEMAND FOR JURY TRIAL**

5 Quiring Monuments requests a trial by jury on all issues so triable.

6 RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of June, 2011.

7 BLACK LOWE & GRAHAM<sup>PLLC</sup>

8  
9 s/ Joel B. Ard

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