

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**

ARROW COMMUNICATION)	
LABORATORIES, INC. AND TRESNESS)	
IRREVOCABLE PATENT TRUST,)	
)	
Plaintiffs,)	
)	NDNY Civil Action No.
v.)	05-CV-1456 (NAM/DEP)
)	
JOHN MEZZALINGUA)	Related Case
ASSOCIATES, INC.,)	NDNY Civil Action No.
)	05-CV-703
Defendant,)	
)	
)	
)	
)	

CONSOLIDATED COMPLAINT

Nature of the Action

1. This is a civil action for patent infringement arising out of the Patent Laws of the United States, Title 35 of the United States Code.

Parties

2. Arrow Communication Laboratories, Inc. (“Arcom”), is a New York corporation having a principal place of business at 185 Ainsley Drive, Syracuse, New York 13210.

3. Tresness Irrevocable Patent Trust (“Tresness Trust”) is a trust established under the laws of the State of New York with a place of business at 2030 Erie Boulevard East, Syracuse, New York 13224.

4. Defendant, John Mezzalingua Associates, Inc. ("PPC"), is a Delaware corporation having a principal place of business at 6176 East Molloy Road, East Syracuse, New York 13057.

Jurisdiction and Venue

5. This Court has jurisdiction of this action under 28 U.S.C. §1338(a).

6. Venue is proper in this judicial district under 28 U.S.C. §§ 1400(b) and 1391(c) because Defendant is subject to personal jurisdiction in this district.

Count I for Patent Infringement of the '838 Patent

7. On April 28, 1998, the United States Patent and Trademark Office issued U.S. Patent No. 5,745,838 ("the '838 patent") entitled "Return Path Filter." A copy of the '838 patent is attached hereto as Exhibit A.

8. Plaintiff Arcom is the lawful owner of all right, title and interest in and to the '838 patent.

9. PPC is infringing the '838 patent by manufacturing, selling and offering for sale in the United States, and by importing into the United States, electronic filters covered by one or more of the claims of the '838 patent, and PPC is contributorily infringing and actively inducing others to infringe said patent. The infringing electronic filters include, at least, PPC's Step Attenuators sold under model numbers, PPC Product #: SSA8-54, PPC Product #: SSA12-54, PPC Product #: SSA16-54, and PPC Product #: SSA*-* . Upon information and belief, PPC sells additional models of infringing Step Attenuators.

10. Tresness Trust gave PPC actual notice of their contention that PPC's Step Attenuator devices infringe the '838 patent at least as early as May 1998 and repeatedly thereafter until the filing of this lawsuit.

11. PPC's infringement, contributory infringement and active inducement of others to infringe have been willful and deliberate.

12. Arcom and Tresness Trust have suffered damages as a consequence of PPC's infringement and contributory infringement of the '838 patent and PPC's active inducement of others to infringe said patent.

13. Arcom continues to suffer harm as a consequence of PPC's infringement and contributory infringement of the '838 patent and PPC's active inducement of others to infringe said patent. This continued harm cannot be cured solely by monetary damages.

14. Arcom will suffer additional damages unless PPC is enjoined from continuing its infringement and contributory infringement of the '838 patent and its active inducement of others to infringe.

Count II for Patent Infringement of the '343 Patent

15. On January 6, 2004, the United States Patent and Trademark Office issued U.S. Patent No. 6,674,343 ("the '343 patent") entitled "Electronic Filter Assembly." A copy of the '343 patent is attached hereto as Exhibit B.

16. Plaintiff Arcom is the lawful owner of all right, title and interest in and to the '343 patent.

17. PPC is infringing at least claims 23-25 of the '343 patent by manufacturing, selling and offering for sale in the United States, and by importing into the United States, electronic filter assemblies covered by one or more of the claims of the '343 patent, and PPC is contributorily infringing and is actively inducing others to infringe said patent.

18. PPC's infringement, contributory infringement and active inducement of others to infringe have been willful and deliberate.

19. Arcom and Tresness Trust have suffered damages as a consequence of PPC's infringement and contributory infringement of the '343 patent and PPC's active inducement of others to infringe said patent.

20. Arcom continues to suffer harm as a consequence of PPC's infringement and contributory infringement of the '343 patent and PPC's active inducement of others to infringe said patent. This continued harm cannot be cured solely by monetary damages.

21. Arcom will suffer additional damages unless PPC is enjoined from continuing its infringement and contributory infringement of the '343 patent and its active inducement of others to infringe.

Count III For Breach of Contract

22. On or about May 7, 1998, Tresness Trust notified PPC (or its predecessor) that PPC's Step Attenuators infringed the '838 patent.

23. Tresness Trust and PPC (or its predecessor) corresponded with each other regarding Tresness Trust's charge of infringement between May 1998 and February 2001, at which time a valid and binding Settlement Agreement dated February 12, 2001 (the "Settlement Agreement") was executed by Tresness Trust and PPC or a predecessor to PPC. A copy of the Settlement Agreement is attached hereto as Exhibit C.

24. In the Settlement Agreement, under a paragraph entitled "Cease and Desist," PPC (or its predecessor) agrees that "For the remaining term of the '838 Patent, PPC and its subsidiaries and divisions, their respective successors and assigns, shall not manufacture, use, offer to sell, advertise for sale, or sell, in the United States, its territories and possessions, and shall not import into the United States, its territories and possessions, TSA Step Attenuators or any other filter circuit that falls within the protection of the '838 Patent."

25. The Settlement Agreement further states that “This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, representatives, successors and assigns.”

26. PPC (or its predecessor) has, since February 12, 2001, manufactured, offered to sell and sold Step Attenuator filter circuits that fall within the protection of the '838 Patent, thereby materially breaching the Settlement Agreement.

27. Tresness Trust has assigned the Settlement Agreement to Arcom.

Count IV For Unjust Enrichment

28. Arcom and Tresness Trust hereby incorporate the allegations set forth in paragraphs 6-27.

29. As a result of the PPC's conduct as alleged hereinabove, PPC has been unjustly enriched, in that it has established a position and reputation as a supplier of step attenuators for the CATV field and has gained a substantial market share with respect to such step attenuators, and, as a result thereof, has unlawfully generated substantial profits for itself. Thus, PPC has received a benefit, the retention of which would be unjust, without paying restitution to Arcom and Tresness Trust.

Demand

WHEREFORE, Arcom and Tresness Trust demand judgment

- a) awarding Arcom and Tresness Trust damages together with interest and costs to compensate it for PPC's infringement of the '838 patent and the '343 patent in accordance with 35 U.S.C. § 284,
- b) increasing the award by three times the amount found or assessed, in accordance with 35 U.S.C. § 284,

- c) enjoining PPC, its officers, agents, servants, employees, and attorneys, and all those in concert or participation with PPC who receive actual notice, from engaging in acts of infringement of the '838 patent and acts of infringement of the '343 patent in accordance with 35 U.S.C. § 283,
- d) awarding Arcom and Tresness Trust its attorneys' fees, in accordance with 35 U.S.C. § 285, and its costs,
- (e) awarding Arcom and Tresness Trust damages for PPC's (and its predecessor's) breach of the Settlement Agreement,
- (f) awarding Arcom and Tresness Trust as restitution for unjust enrichment the value of the benefits received by PPC (and its predecessor) from the unlawful use of Arcom and Tresness Trust's property, including PPC's (and its predecessor's) enhanced standing and reputation as a supplier in the CATV field, PPC's (and its predecessor's) profits derived from selling its Step Attenuator products and other filters that fall within the protection of the '838 Patent, and compensation for the unlawful use of Arcom and Tresness Trust's property, in addition to the damages award under 35 U.S.C. § 284,
- (g) enjoining PPC and all those in privity with PPC from violating the covenant in paragraph 2 of the Settlement Agreement, not to manufacture, use, offer to sell, advertise for sale, or sell, in the United States, its territories and possessions, and not to import into the United States, its territories and possessions, for the remaining term of the '838 patent, any filter circuit that falls within the protection of the '838 Patent, and
- (h) such other and further relief as the Court may deem just and proper.

Demand For Jury Trial

Arcom and Tresness Trust respectfully demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on any and all issues for which it is entitled to a trial by jury.

Respectfully submitted,

March 20, 2007

/s Glenn E. Forbis

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2007, I electronically filed the foregoing document with the Clerk of the District Court using the CM/ECF System, which sent notification of such filing to the following:

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