

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
FEDERAL HOME LOAN MORTGAGE)		
CORPORATION, a/k/a FREDDIE MAC)		
8200 Jones Branch Drive)		
McLean, Virginia 22102)		
)		
Plaintiff,)	Civil Action No. 1:10cv1948-RJL	
)		
v.)		
)		
GRAFF/ROSS HOLDINGS LLP)	<u>DEMAND FOR JURY TRIAL</u>	
400 North Michigan Avenue)		
Suite 1616)		
Chicago, Illinois 60611)		
)		
Defendant.)		
_____)	

**PLAINTIFF’S FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND DEMAND FOR JURY TRIAL**

Plaintiff Federal Home Loan Mortgage Corporation, a/k/a Freddie Mac (“Freddie Mac”) for its First Amended Complaint against Defendant Graff/Ross Holdings LLP (“Graff/Ross”) for Declaratory Judgment, alleges and avers as follows:

The Parties

1. Freddie Mac is a corporation formed under Title 12 U.S.C. § 1452, having its principal place of business at 8200 Jones Branch Drive, McLean, Virginia 22102 with offices at 401 9th Street, N.W., Washington, D.C. 20004.

2. On information and belief, Graff/Ross is a limited liability partnership having its principal place of business at 400 North Michigan Avenue, Suite 1616, Chicago, Illinois 60611.

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Court for the District of Columbia

Factual Background

3. On February 20, 2001, U.S. Patent No. 6,192,347 (the "'347 patent"), titled "System and Methods for Computing to Support Decomposing Property into Separately Valued Components," issued. The sole named inventor of the '347 patent is Richard A. Graff of Chicago, IL. The assignee identified on the face of the patent is Graff/Ross.

4. On February 26, 2001, Graff/Ross sent a letter to Freddie Mac alleging that Freddie Mac infringed and continues to infringe several claims of the '347 patent.

5. On November 29, 2001, Freddie Mac responded to Graff/Ross' letter indicating that it did not infringe the '347 patent and invited Graff/Ross to respond with further information detailing its allegations of infringement.

6. Graff/Ross never responded to Freddie Mac's letter.

7. On December 19, 2006, the '044 patent, titled "Bidder System Using Multiple Computers Communicating Data to Carry Out Selling Fixed Income Instruments," issued. The sole named inventor of the '044 patent is Richard A. Graff of Chicago, IL. The assignee identified on the face of the patent is Graff/Ross.

8. More than six years after Graff-Ross' letter regarding the '347 patent, on May 1, 2007, Graff/Ross filed a "Complaint for Patent Infringement and Demand for Jury Trial" (the "Graff/Ross Complaint") in the United States District Court for the District of Columbia. *See* Case No. 1:07cv796 (Leon, J.).

9. The Graff/Ross Complaint alleged that "Freddie Mac conducts sales of securities, including fixed income instruments, electronically, including over the Internet" and that "Freddie Mac has sold, and continues to sell, at least some of these securities, through bond auctions conducted electronically, including over the internet."

10. The Graff/Ross Complaint alleged that Graff/Ross is the owner of the '347 patent and that Freddie Mac infringed and continues to infringe "one or more claims of the '347 patent by using computer systems and methods to conduct electronic bond auctions of fixed income instruments."

11. The Graff/Ross Complaint alleged that Graff/Ross is the owner of U.S. Patent No. 7,152,044 (the "'044 patent") and that Freddie Mac infringed and continues to infringe "one or more claims of the '044 patent by using computer systems and methods to conduct electronic bond auctions of fixed income instruments."

12. Freddie Mac conducts electronic auctions of Reference Bills securities and Reference Notes securities using a website powered by Grant Street Group. Reference Bills securities are short-term, unsecured general corporate obligations. Reference Notes are longer-term, unsecured general corporate obligations.

13. On April 29, 2009, Freddie Mac moved to dismiss Graff/Ross' claims of infringement of both the '044 and '347 patents. In view of the Federal Circuit's opinion in *Muniauction, Inc. v. Thompson Corp.*, 532 F.3d 1318 (Fed. Cir. 2008), relating to similar patent claims, Graff/Ross withdrew its claims regarding the '044 patent and granted Freddie Mac a covenant not to sue on the '044 patent.

14. On September 4, 2009, Graff-Ross granted Freddie Mac a covenant not to sue on the '044 patent. Graff-Ross, however, expressly limited the covenant not to sue to the '044 patent, and excluded the '347 patent and other patents in this same patent family.

15. On August 27, 2010, Magistrate Judge Kay issued a Report and Recommendation that U.S. District Court Judge Leon grant Freddie Mac's Motion to Dismiss Graff/Ross' Claims

of Infringement of the Two Asserted Patents. The motion to dismiss, however, currently remains pending before this Court.

16. On March 23, 2010, U.S. Patent No. 7,685,053 (the "'053 patent"), titled "Bidder System Using Multiple Computers Communicating Data to Carry Out Selling Fixed Income Instruments," issued. A true and correct copy of the '053 patent is attached hereto as Exhibit A. The '053 patent purports to have the same inventors, the same assignee, the same written description of the invention, the same figures, and very similar claims as the asserted '347 patent and the '044 patent.

17. For example, the face of the '053 patent lists Richard A. Graff of Chicago, IL as the sole inventor—the same inventor that is listed on the face of the '347 and '044 patents. On information and belief, Richard Graff assigned his interest in the '053 patent to Graff/Ross via a document executed on February 1, 2007 and recorded with the U.S. Patent and Trademark Office on February 23, 2007. The assignee identified on the face of the patent is Graff/Ross. The '053 patent has the same named inventor and purported assignee as the '347 and '044 patents.

18. The '053 patent also purports to include the identical written description of the invention and figures as the asserted '347 and '044 patents. Specifically, the '053 patent purports to be a continuation of the patent application that issued as the '044 patent; a continuation of the patent application that issued as U.S. Patent No. 7,107,239; a continuation of the patent application that issued as the '347 patent; and a continuation of the patent application that issued as U.S. Patent No. 7,203,661, which is purportedly a continuation-in-part of the patent application that issued as U.S. Patent No. 5,802,501, which is purportedly a continuation-in-part of application No. 07/967,644, now abandoned.

19. According to the Manual of Patent Examining Procedure § 201.07, “[t]he disclosure presented in the continuation must be the same as that of the original application; i.e., the continuation should not include anything which would constitute new matter if inserted in the original application.”

20. The patent claims in the ’053 patent are also very similar to the claims in the ’347 and ’044 patents.

21. For example, claim 1 of the ’053 patent recites the steps of “receiving . . . data,” “computing a first yield/discount rate at least in part from at least some of said data,” and “outputting financial analysis output,” and claims 52 and 53—recite some slight variation of these steps: receiving data, computing a yield/discount rate, and outputting financial analysis.

22. By comparison, claim 101 of the ’347 patent recites receiving input data (in the form of input data converted into input digital electrical signals), computing a purchase price, and generating financial analysis output. Claim 14 of the ’044 patent requires inputting data, computing a yield/discount rate, outputting the rate, and displaying the rate.

23. On November 15, 2010, Freddie Mac first sought a declaratory judgment that Freddie Mac does not infringe any valid and enforceable claim of the ’053 patent in a complaint filed in this Court.

24. Graff/Ross then rejected Freddie Mac’s request for a covenant not to sue because it wanted to wait until resolution of the pending motion to dismiss in Case No. 1:07cv796 (the action initiated by Graff/Ross).

25. On December 15, 2010, Graff/Ross proposed a standstill agreement to Freddie Mac so that Freddie Mac would dismiss its declaratory judgment action related to the ’053 patent until after the pending motion to dismiss was decided:

Graff/Ross Holdings LLP stipulates that a civil action, if any, filed against Federal Home Loan Mortgage Corporation (the “Defendant”) concerning United States Patent No. 7,685,053 or any other patent assigned to Graff/Ross Holdings LLP will be filed in the United States District Court for the District of Columbia. In exchange for this stipulation, Federal Home Loan Mortgage Corporation stipulates and agrees to dismiss its pending declaratory judgment action concerning United States Patent No. 7,685,053 and not to institute any further declaratory judgment actions on patents assigned to Graff/Ross Holdings LLP.

26. After further discussions, on February 16, 2011, Graff/Ross then filed a Notice Concerning Amending Complaint to Add Two Related Graff/Ross Patents in the case filed in 2007 in which Magistrate Judge Kay has already issued a Report and Recommendation recommending final dismissal of all claims (i.e., Case No. 1:07cv796). Graff-Ross’s Notice affirmatively states that it intends to sue Freddie Mac for infringement on both the ’053 patent and Published Patent Application No. 2008-0120247:

Plaintiff and Defendant have discussed the recently filed declaratory judgment action Case 1:10-cv-01948-RJL concerning Graff-Ross United States Patent No. 7,685,053 (“the ’053 Patent). Since the time of filing of this declaratory judgment action, the Patent Office has issued a notice of allowance for United States Published Patent Application No. 2008/0120247 (“the Patent About to Issue”), and Graff-Ross has paid the issue fee. Freddie Mac was provided notice of the claims for the Patent About to Issue in Docket Nos. 31-33 filed in this civil action on April 27, 2009. Per statute found at 35 U.S.C. Sections 122(b) and 154(d), damages for infringement of the Patent About to Issue run from the date of notice, April 27, 2009. Both the ’053 Patent and the Patent About to Issue share a common patent specification with United States Patent No. 6,192,347, the patent in suit. Consequently, for purposes of judicial economy, it makes the most sense to address all issues concerning these three patents under this civil action number. Graff/Ross provides the Court with notice of these facts while it waits to hear from Freddie Mac as to whether it will oppose the addition to this civil action of the ’053 Patent and the Patent About to Issue. This notice is provided consistent with Federal Rule of Civil Procedure 1 and so that the interests of justice and judicial economy may be served.

27. As a result, Graff/Ross persists in a course of conduct that creates a cloud of uncertainty over Freddie Mac’s right to conduct electronic auctions of Reference Bills securities and Reference Notes securities using a website powered by Grant Street Group free from claims

of infringement by Graff/Ross. That course of conduct includes sending a letter to Freddie Mac in 2001 asserting infringement of the '347 patent; filing a lawsuit against Freddie Mac in 2007 asserting infringement of the '347 and '044 patents; continuing to pursue its infringement claim against Freddie Mac with respect to the '347 patent; obtaining a continuation patent—the '053 patent—directed to the same subject matter and based on the same parent application as the '347 patent that it continues to assert against Freddie Mac; failing to provide a covenant-not-to-sue with respect to the '347 and '053 patents; and filing the Notice Concerning Amending Complaint to Add Two Related Graff/Ross Patents in pending Case No. 1:07cv796.

28. Graff/Ross' conduct can be reasonably inferred as demonstrating an intent by Graff/Ross to enforce the '053 patent and the patent expected to issue from Published Patent Application No. 2008/0120247 against Freddie Mac with respect to the same electronic auctions of Reference Bills securities and Reference Notes securities that Graff/Ross has accused of infringing the '347 and '044 patents.

29. Accordingly, there is a substantial controversy between the parties that is of sufficient immediacy and reality to support declaratory judgment jurisdiction.

Jurisdiction and Venue

30. By filing the Graff/Ross Complaint and the Graff/Ross Amended Complaint in the United States District Court for the District of Columbia, Graff/Ross has submitted to the jurisdiction and venue of this Court. In addition, Graff/Ross is subject to the Court's jurisdiction pursuant to due process and the long-arm statute of the District of Columbia due to Graff/Ross' business in the forum, including the fact that Graff/Ross has asserted and litigated its patent rights against services being used and/or offered by Freddie Mac in this District.

31. On information and belief, Graff/Ross purports to be the sole holder of the entire right, title and interest in the '053 patent and the patent expected to issue from Published Patent Application No. 2008/0120247.

32. Graff/Ross has created an actual, real, immediate and justiciable controversy with Freddie Mac because, among other things, (1) Graff/Ross has previously accused Freddie Mac of infringement of the '044 and '347 patents, (2) Graff-Ross continued to prosecute patent claims based on the same description of the invention and drawings as the previously asserted '347 patent, (3) the '053 patent has claims very similar to the claims asserted in the '347 and '044 patents, (4) Graff-Ross expressly limited the covenant to sue granted to Freddie Mac to the '044 patent and therefore excluded the '347 and '053 patents, (5) the '053 patent purports on its face to have the same inventor and assignee, (6) Graff-Ross has a history of being slow to file suit despite claiming that its patents have been infringed, (7) Graff/Ross refused to provide a covenant-not-to-sue with respect to the '053 patent, and (8) Graff/Ross filed the Notice Concerning Amending Complaint to Add Two Related Graff/Ross Patents in pending Case No. 1:07cv796.

33. Freddie Mac's claim sets forth a cause of action arising under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, and under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction pursuant to 38 U.S.C. §§ 1331, 1338(a), 2201 and 2202 with respect to an actual controversy arising under the Patent Laws, Title 35 of the United States Code.

34. Under 12 U.S.C. § 1452(c)(7), Freddie Mac "shall have power ... to sue and be sued, complain and defend, in any State, Federal, or other court." And under 12 U.S.C. § 1452(f)(2), "[n]otwithstanding section 1349 of title 28 or any other provision of law, ... all

civil actions to which [Freddie Mac] is a party shall be deemed to arise under the laws of the United States, and the other district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value.”

35. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (c) and 1400(b), and this Court is the most convenient forum because (1) Graff/Ross is subject to personal jurisdiction in this District, (2) Graff/Ross has already sued Freddie Mac in this Court, and (3) the Court is already familiar with the parties’ facts and legal claims.

CAUSE OF ACTION

(Declaratory Judgment of Non-Infringement/Invalidity of the '053 Patent)

36. Freddie Mac repeats the allegations of paragraphs 1-35 as if fully set forth herein.

37. Freddie Mac conducts electronic auctions of Reference Bills securities and Reference Notes securities, including in this District.

38. Freddie Mac’s electronic auctions of Reference Bills securities and Reference Notes securities do not infringe and have not infringed any valid and enforceable claim of the '053 patent.

39. Because Graff/Ross has previously accused Freddie Mac of infringement of the '044 and '347 patents, because the '053 patent is purportedly based on the same disclosure—including identical or nearly identical figures, drawings and subject matter—as the '044 and '347 patents, and because Graff/Ross filed the Notice Concerning Amending Complaint to Add Two Related Graff/Ross Patents in pending Case No. 1:07cv796, Graff/Ross has created an actual, real, immediate and justiciable controversy with Freddie Mac with respect to noninfringement of the '053 patent.

40. Freddie Mac seeks a declaration that its electronic auctions of Reference Bills securities and Reference Notes securities do not infringe and have not infringed any valid and enforceable claim of the '053 patent.

41. Freddie Mac is further entitled to permanent injunctive relief enjoining Graff/Ross from taking any actions or making any statements inconsistent with Freddie Mac's right to make, use, offer to sell, and/or sell its electronic auctions of Reference Bills securities and Reference Notes securities without regard to the '053 patent.

JURY TRIAL

42. Freddie Mac demands a jury trial as to all issues in this action that are triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Freddie Mac respectfully requests that Judgment be entered in its favor and against Graff/Ross on its claim and that this Court grant the following relief:

(i) Entry of a Declaration that Freddie Mac does not infringe and has not infringed the '053 patent, under any theory, including literal infringement or infringement under the doctrine of equivalents;

(ii) Entry of a Declaration that the claims of the '053 patent are invalid;

(iii) Injunctive relief enjoining Graff/Ross, and its agents, servants, employees, successors, licensees, assigns, and all those in privity with Graff/Ross, from bringing any lawsuit or threat against Freddie Mac for infringement of the '053 patent;

(iv) Finding that this case is exceptional within the meaning of 35 U.S.C. § 285 and awarding to Freddie Mac its reasonable attorneys' fees, expenses, and costs incurred in this action; and

(v) Such other and further relief to Freddie Mac as the Court deems equitable and just in the circumstances.

Date: February 17, 2011

Respectfully submitted

/s/ Matthew J. Moore

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