

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

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CLERK
LAURA A. BRIGGS
CLERK

TRILITHIC, INC.,

Plaintiff,

v.

CABLE LEAKAGE TECHNOLOGIES, INC.,

Defendant.

Civil Action No. _____

Jury Trial Demanded

1 : 09-cv-1513 SEB-TAB

COMPLAINT FOR DECLARATORY JUDGMENT

Introduction

1. In this action, Plaintiff, Trilithic, Inc. ("Trilithic"), seeks a declaratory judgment that its Leakage Analysis Workshop ("LAW") service, and related products and services, do not infringe U.S. Patent No. 7,548,201 (the "'201 Patent"). Ex. A. Trilithic also requests that the Court issue a declaratory judgment concerning certain rights and obligations under a License Agreement between it and the Defendant, Cable Leakage Technologies, Inc. ("CLT"), which concerns the '201 Patent and certain other patents.

Parties

2. Trilithic is an Indiana corporation with its headquarters at 9710 Park Davis Drive, Indianapolis, IN 46235.

3. Upon information and belief, CLT is a Texas corporation with offices at 940 Hensley Lane, Wylie, TX 75098.

Jurisdiction and Venue

4. This action arises under the patent laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over Trilithic's claims under the

Patent Laws of the United States pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201, as well as 35 U.S.C. § 1 *et seq.* This Court has supplemental jurisdiction under Trilithic's contract claims pursuant to 28 U.S.C. §§ 1367 and 2201.

5. The Court has personal jurisdiction over CLT and venue is proper in this District, including under 28 U.S.C. §§ 1391(b) & 1400. Among other things, CLT has contracted with Trilithic, which is a resident of this District. Trilithic is also informed and believes that CLT regularly transacts other business in Indiana.

Background

6. Trilithic entered into a cross-license agreement with CLT on January 31, 1995, under which the parties exchanged certain rights to their patents.

7. On October 11, 2006, Trilithic and CLT entered into a new License Agreement with CLT (the "License Agreement"). Pursuant to the License Agreement, CLT provided certain rights to Trilithic under its existing patents and certain related patents and applications. The License Agreement states that Trilithic must pay CLT a royalty on certain Domestic Sales of Products that practice the valid, enforceable, and issued claims of patents subject to the License Agreement.

8. In 2009, Trilithic concluded that it had no Domestic Sales of any product within the scope of any valid, enforceable, and issued claim of the patents subject to the License Agreement. Consequently, Trilithic did not owe CLT a royalty under the License Agreement.

9. On June 16, 2009, the '201 Patent issued with CLT as it is named assignee. The '201 Patent is subject to the License Agreement.

10. On July 21, 2009, CLT sent a letter to Trilithic advising it of the issuance of the '201 Patent. CLT stated, in part, that it "hopes that Trilithic takes advantage of the technology protected by the '201 patent and covered under the [License Agreement]."

11. Trilithic responded by letter dated September 15, 2009, that it did "not currently plan to introduce a Trilithic product that includes the '201 patent's systems or methods."

12. The parties had additional communications, including by email. On November 16, 2009, Mr. Perry Havens, who is (on information and belief) CLT's President, sent an email to Mr. Terry Bush, Trilithic's President, in which Mr. Havens accused Trilithic's current products of infringing the '201 Patent. Specifically, Mr. Havens wrote the following:

I am not asking you to evaluate any "new concepts". We have a signed license agreement. I'm asking you to honor the agreement you signed. It's been several days since your last email, should I expect a reply?"

13. Mr. Bush requested additional information regarding the nature of CLT's infringement claims against it. On November 20, 2009, Mr. Havens advised Mr. Bush that CLT contends that Trilithic's LAW service infringes the '201 Patent:

.... The '201 patent covers technology that accurately modifies or scales the magnitude of the leak to comply with FCC regulations. Therefore, we believe your products are covered under the 2006 license agreement.

14. Trilithic does not wish to terminate the License Agreement with CLT. Trilithic's LAW service, however, does not infringe any valid and enforceable claim of the '201 Patent. An actual controversy therefore exists regarding the construction, scope, enforceability, and validity of the '201 Patent under the United States Patent Laws.

15. CLT has also notified Trilithic that CLT intends to pursue arbitration under the License Agreement. The License Agreement, however, limits the obligation to arbitrate to disputes arising "*directly* under the *express terms*" of the License Agreement "or the grounds of

termination thereof[.]” (Emphasis added). The present dispute concerns, *inter alia*, the construction and scope of the ‘201 Patent and does not arise “directly under the express terms of this Agreement” or “the grounds of termination thereof[.]” The License Agreement does not address the construction, scope, enforceability, and validity of any patent, including the ‘201 Patent. The present dispute instead arises under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.* Moreover, Trilithic does not wish to terminate the License Agreement.

16. The License Agreement affords CLT the right to pursue other remedies, including, potentially, infringement claims against Trilithic and its customers, upon certain written notice of an alleged breach of the License Agreement. CLT has given written notice that it believes Trilithic to be in breach of the License Agreement.

Count I – Non-Infringement of the ‘201 Patent

17. Trilithic repeats each allegation of paragraphs 1-16 as if set forth here in full.

18. Trilithic’s LAW service, and any other accused products and systems, do not infringe any valid and enforceable claim of the ‘201 patent.

19. To afford Trilithic, its customers, and the marketplace relief from uncertainty and controversy caused by the threat of an enforcement action by CLT, Trilithic is entitled to a declaratory judgment that its products do not infringe the ‘201 patent.

Count II – License Agreement

20. Trilithic repeats each allegation of paragraphs 1-19 as if set forth here in full.

21. On information and belief, CLT intends to pursue arbitration under the License Agreement.

22. The arbitration clause of the License Agreement, however, does not govern the disputes presented in Count I and hereinbelow. The License Agreement does not address, *inter*

alia, the scope, construction, infringement, enforceability, or validity of any patent or patent claim.

23. On information and belief, an actual dispute exists regarding whether Trilithic's declaratory judgment claims in this lawsuit are subject to the arbitration clause of the License Agreement.

24. To afford Trilithic relief from uncertainty and controversy caused by the threat of arbitration proceedings by CLT, Trilithic is entitled to a declaratory judgment that the aforescribed disputes with CLT are not subject to arbitration under the License Agreement.

Reservation of Right

25. Trilithic disputes that its products infringe any valid, enforceable claims in the other patents subject to the License Agreement, and reserves the right to add additional claims, including additional declaratory judgment claims, consistent with its position. To the extent that CLT asserts that Trilithic's products infringe other patent claims, Trilithic will also seek to add declaratory judgment claims regarding those patents and claims to this Lawsuit.

Jury Demand

Trilithic requests a trial by jury on all issues so triable.

* * * * *

WHEREFORE, Trilithic requests that this Court:

A. Declare that Trilithic's LAW system does not directly or indirectly infringe any valid and enforceable claim of the '201 patent.

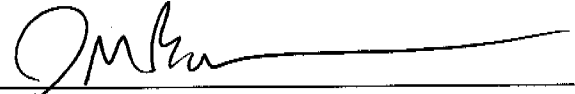
B. Declare the parties' disputes are not subject to the License Agreement's arbitration clause.

C. Find for Trilithic on each and every claim or contested matter.

D. Award Trilithic its costs and expenses, as permitted by law.

E. To the extent warranted by CLT's allegations and conduct, declare this matter an "exceptional case" and award Trilithic all relief available to it under the Patent Laws of the United States, including Trilithic's reasonable attorneys fees pursuant to 35 U.S.C. § 285.

F. Award Trilithic all such other relief as the Court deems just and proper.



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Dated: December 10, 2009