

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

HUBWOO SA, a French corporation,
HUBWOO USA INC., an Illinois
corporation, and HUBWOO USA, L.P.,
a Texas limited partnership,

Civil Action No. 4:11-cv-02272

Plaintiffs,

JURY

v.

SUPPLY CHAIN CONNECT, LLC, a Texas
corporation,

Defendant.

**FIRST AMENDED COMPLAINT OF PLAINTIFFS HUBWOO SA,
HUBWOO USA INC., AND HUBWOO USA, L.P. FOR
DECLARATORY JUDGMENT OF INVALIDITY AND NONINFRINGEMENT**

Plaintiffs Hubwoo SA, Hubwoo USA Inc., and Hubwoo USA, L.P. (collectively “Plaintiffs” or “HUBWOO”), for their cause of action against defendant Supply Chain Connect, LLC (hereinafter “Defendant” or “SCC”), allege as follows:

NATURE OF THE ACTION

1. This is a declaratory judgment action pursuant to 28 U.S.C. §§ 2201(a) and 2202 in which Plaintiffs seek a determination that they have not infringed and do not infringe any claims of U.S. Patent Nos. 7,451,107 (“the ‘107 patent”) and 7,945,498 (“the ‘498 patent”) (hereinafter collectively “the patents-in-suit”) under 35 U.S.C. § 271, that the claims of the ‘107 patent are invalid under at least 35 U.S.C. §§ 102, 103(a), and 112, ¶¶ 1, 2, and 6, and that the claims of the ‘498 patent are invalid under at least 35 U.S.C. §§ 102 and 103(a).

THE PARTIES

2. Plaintiff Hubwoo SA is a corporation organized and existing under the laws of France and maintains its principal place of business at 11-15, rue St. Georges, 75009 Paris, France. Hubwoo SA and its subsidiaries and affiliates are engaged in the business of providing on-demand procurement solutions for the SAP software community.

3. Plaintiff Hubwoo USA Inc. is a corporation organized and existing under the laws of the State of Illinois and maintains its principal place of business at 79 W. Monroe Street, Suite 1300, Chicago, Illinois, 60603. Plaintiff Hubwoo USA Inc. is an affiliate of Plaintiff Hubwoo SA.

4. Plaintiff Hubwoo USA, L.P. is a limited partnership organized and existing under the laws of the State of Texas and maintains its principal place of business at 10777 Westheimer Road, Suite 900, Houston, Texas, 77042.

5. Upon information and belief, defendant Supply Chain Connect, LLC, is a limited liability corporation organized and existing under the laws of the State of Texas, with its principal place of business at 11221 Katy Freeway, Suite 107, Houston, Texas, 77043. On information and belief, SCC was at one time engaged, from a location in this district, in providing a business-to-business network system that purportedly allowed companies to optimize their purchasing and sales processes. In addition, on information and belief, SCC has sought and currently seeks to enforce and/or license the patents-in-suit from a location in this district.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1338(a) because HUBWOO's claims arise under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and under the Declaratory Judgment Act, 28 U.S.C.

§§ 2201(a) and 2202. As set forth in paragraphs 8-12 hereinbelow, HUBWOO and SCC have adverse legal interests with respect to the patents-in-suit and there is a substantial controversy between HUBWOO and SCC of sufficient immediacy and reality to warrant issuance of a declaratory judgment.

7. Defendant is subject to personal jurisdiction in the State of Texas because it resides in this district and regularly transacts business in this district by, among other things, engaging in enforcement and licensing activities with respect to the patents-in-suit from its location in this district, involving customers located in this district and elsewhere.

8. In addition, Defendant is subject to personal jurisdiction in the State of Texas on the following grounds: On information and belief, on or about April 7, 2011, SCC's counsel, Lundeen & Lundeen, PLLC ("Lundeen") sent a letter on Defendant SCC's behalf to Plaintiff Hubwoo SA (addressed to "Hubwoo.com SA," Plaintiff Hubwoo SA's name prior to a name change), accusing HUBWOO of infringing at least claim 1 of the '107 patent by its operation of a clearinghouse network and demanding that HUBWOO immediately cease all infringement of the '107 patent. A true and correct copy of that letter is attached as Exhibit "A." On information and belief, Lundeen's April 7, 2011 letter was sent from a Lundeen office located in this district.

9. Moreover, the April 7, 2011 letter from SCC's counsel accused HUBWOO's clearinghouse of performing the steps recited in at least method claim 20 of then-pending U.S. Application No. 12/205,793 ("the '793 application"). The April 7, 2011 letter from SCC's counsel to HUBWOO also demanded that HUBWOO change its operating system and activities to avoid infringement of the soon-to-issue claims of the '793 application. Method claim 20 of the '793 application (and other method claims in the '793 application) have now issued in the '498 patent.

10. The April 7, 2011 letter from SCC's counsel threatened HUBWOO with litigation if HUBWOO did not enter into a license with SCC covering the '107 patent and the '793 application. However, as set forth in paragraphs 21-46 hereinbelow, HUBWOO asserts that the patents-in-suit are invalid and are not being infringed by HUBWOO's activities. Based on the foregoing, HUBWOO and SCC have adverse legal interests with respect to the patents-in-suit and there is a substantial controversy between HUBWOO and SCC of sufficient immediacy and reality to warrant issuance of a declaratory judgment. Further, the act of sending the April 7, 2011 letter from a location in this district and the letter's contents constitute acts in this district that give rise to HUBWOO's claims against SCC for declaratory relief.

11. On information and belief, Defendant SCC has sent a cease and desist letter to one or more of Quadrem International Holdings, Ltd., Quadrem International, Ltd., and/or Quadrem Netherlands, B.V. (hereinafter collectively "QUADREM") asserting infringement of the '107 patent and/or the '793 application, demanding that one or more QUADREM entities take a license from SCC, and threatening patent infringement litigation against one or more QUADREM entities on at least the '107 patent. On information and belief, on June 10, 2011, SCC filed an action in this District, *Supply Chain Connect, LLC v. Afton Chemical Corp., et al.*, Civil Action No. 4:11-cv-02191, naming Quadrem International Holdings, Ltd., Quadrem International, Ltd., Quadrem Netherlands, B.V., and 17 of QUADREM's customers as defendants and alleging infringement of the '107 patent.

12. On information and belief, Defendant SCC has sent a cease and desist letter to Elemica, Inc. ("ELEMICA") asserting infringement of the '107 patent and/or the '793 application, demanding that ELEMICA take a license from SCC, and threatening patent infringement litigation against ELEMICA on at least the '107 patent. On information and belief,

on June 10, 2011, SCC filed an action in the United States District Court for the District of Delaware, *Supply Chain Connect, LLC v. BASF Corp., et al.*, Case No. 1:11-cv-00513-UNA, naming ELEMICA and 12 of ELEMICA's customers as defendants and alleging infringement of the '107 patent.

13. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 12 above and incorporate them herein by reference. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b) and 1391(c), on the grounds that (a) the Defendant SCC resides in this district, (b) the Defendant SCC committed, in this district, the acts that give rise to Plaintiffs' claims against SCC, and (c) the Defendant SCC is subject to personal jurisdiction in this district.

STATEMENT OF FACTS

14. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-13 above and incorporate them herein by reference.

15. The '107 patent is entitled "Business-to-Business Electronic Commerce Clearinghouse" and issued on November 11, 2008. A true and correct copy of the '107 patent is attached as Exhibit "B."

16. On information and belief, SCC is the owner by assignment of the '107 patent.

17. The '498 patent is entitled "Method for Facilitating Chemical Supplier Transmissions" and issued on May 17, 2011. A true and correct copy of the '498 patent is attached as Exhibit "C."

18. On information and belief, SCC is the owner by assignment of the '498 patent.

19. Plaintiff Hubwoo SA has owned and operated and currently owns and operates two data centers located in or around Paris, France that have hosted and currently host HUBWOO's business-to-business network. HUBWOO does not currently own or operate, and

at no time during the life of the patents-in-suit has HUBWOO ever owned or operated any computer servers or data centers in the United States that have hosted or currently host HUBWOO's business-to-business network. HUBWOO does not currently engage, and at no time during the life of the patents-in-suit has HUBWOO ever engaged, any person or entity to own or operate on its behalf any computer servers or data centers in the United States that have hosted or currently host HUBWOO's business-to-business network. HUBWOO does not currently perform, and at no time during the life of the patents-in-suit has HUBWOO ever performed, from or at any location in the United States, any of the clearinghouse functions recited in the claims of the '107 patent. HUBWOO does not currently engage, and at no time during the life of the patents-in-suit has HUBWOO ever engaged, any person or entity to perform on its behalf, from or at any location in the United States, any of the clearinghouse functions recited in the claims of the '107 patent.

20. HUBWOO did not have any knowledge of the patents-in-suit until on or about April 7, 2011, when it received the cease and desist letter from SCC's counsel (Lundeen) accusing HUBWOO of infringement and threatening enforcement of the '107 patent and the '793 application.

COUNT I

(Declaratory Judgment of Invalidity of the '107 Patent)

21. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 20 above and incorporate them herein by reference.

22. On information and belief, the claims of the '107 patent are invalid for failure to comply with one or more conditions for patentability set forth in the United States Patent Act, including, at least, in 35 U.S.C. §§ 102, 103(a), and 112, ¶¶ 1, 2, and 6.

23. On information and belief, at least the following prior art renders claims 1-10 of the '107 patent invalid for anticipation and/or obviousness under 35 U.S.C. §§ 102 and 103(a):

(a) Commerce One, Inc.'s Commerce Chain Solution, including Commerce One BuySite software 4.0 and Commerce One MarketSite software 2.0 (released November 23, 1998);

(b) U.S. Patent No. 6,226,675 (true and correct copy attached as Exhibit "D");

(c) Glushko, "How XML Enables Internet Trading Communities and Marketplaces," Commerce One Working Paper (1999) (true and correct copy attached as Exhibit "E");

(d) Ricker, Munro, and Hopeman, "XML and EDI: Peaceful Coexistence," XML Solutions, Inc. (1999) (true and correct copy attached as Exhibit "F");

(e) Microsoft Business Commerce Case Study; "Los Angeles County Saves Big Bucks Shopping Online" (1998) (true and correct copy attached as Exhibit "G");

(f) CheMatch.com. Outlook – 11/10/1999 – CMRICIS (true and correct copy attached as Exhibit "H");

(g) Commerce One Announces Shipment of New Release of the Commerce Chain Solution, Business Wire (Nov. 23, 1988) (true and correct copy attached as Exhibit "I");

(h) U.S. Patent No. 5,893,076 (true and correct copy attached as Exhibit "J");

(i) U.S. Patent No. 5,758,327 (true and correct copy attached as Exhibit "K");

(j) U.S. Patent No. 6,094,642 (true and correct copy attached as Exhibit "L");

(k) Federal Express Press Release of January 1997 (true and correct copy attached as Exhibit "M");

(l) U.S. Patent No. 5,717,989 (true and correct copy attached as Exhibit "N");

(m) U.S. Patent No. 6,167,378 (true and correct copy attached as Exhibit "O"); and/or

(n) U.S. Patent No. 5,319,542 (true and correct copy attached as Exhibit "P").

24. At least claims 4-7, 9, and 10 of the '107 patent are invalid for indefiniteness under 35 U.S.C. §§ 112, ¶¶ 2, 6, on the grounds that they each recite a clearinghouse computer server "component" that performs certain recited functions -- and thereby constitute means-plus-function claims under 35 U.S.C. § 112, ¶ 6 -- but the '107 patent specification fails to identify or describe any corresponding internal structure for the claimed computer server "component" in the form of an algorithm that performs the recited functions.

25. In the alternative, in the event that claims 4-7, 9, and 10 of the '107 patent are not construed as being subject to 35 U.S.C. § 112, ¶ 6, at least those claims of the '107 patent are invalid under 35 U.S.C. § 112, ¶ 1, for lack of an adequate written description to support the full scope of each of those claims.

26. There is a justiciable controversy between the parties regarding the invalidity of the '107 patent and Plaintiffs are entitled to a declaratory judgment that will finally resolve this issue.

COUNT II

(Declaratory Judgment of Noninfringement of the '107 Patent)

27. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1-26 above and incorporate them herein by reference.

28. The '107 patent includes just one independent claim, *i.e.*, claim 1.

29. To the extent that independent claim 1 or any of the other '107 patent claims might be construed to read on any of Plaintiffs' conduct as an infringement of any kind, Plaintiffs nonetheless have not infringed and do not infringe any of those claims, either directly, indirectly, by contribution, or by inducement, or in any other way, because invalid claims are not susceptible to being infringed.

30. HUBWOO has not directly infringed and is not directly infringing claim 1 or any other claim of the '107 patent, either literally or under the doctrine of equivalents, because HUBWOO has not and does not use any web browser associated with a trading member to generate data and transmit it to a clearinghouse computer server in an original format compatible with a clearinghouse format, and no person or entity acting for or on behalf of HUBWOO has used or is using any web browser associated with a trading member to allow the trading member to generate data and transmit it to a clearinghouse computer server in an original format compatible with a clearinghouse format.

31. To the extent that there has not been and is no direct infringement of the '107 patent claims, HUBWOO has not been and is not now engaged in any indirect infringement of the '107 patent, whether by contribution, or by inducement, or in any other way, either literally or under the doctrine of equivalents.

32. HUBWOO has not been and is not now engaged in contributory infringement of the '107 patent, either literally or under the doctrine of equivalents, because there are substantial non-infringing uses for HUBWOO's business to business network system other than chemical supplier transactions.

33. HUBWOO cannot have been engaged in contributory infringement or inducement of infringement of either of the patents-in-suit prior to receiving actual notice of the patents on April 7, 2011.

34. Based on at least the foregoing grounds, HUBWOO has not infringed, and is not infringing, either directly, indirectly, by contribution, or by inducement, or in any other way, independent claim 1 of the '107 patent, or any other claim of the '107 patent, either literally or under the doctrine of equivalents.

35. There is a justiciable controversy between the parties regarding the alleged infringement of the '107 patent by HUBWOO and Plaintiffs are entitled to a declaratory judgment that will finally resolve this issue.

COUNT III

(Declaratory Judgment of Noninfringement of the '498 Patent)

36. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 20 above and incorporate them herein by reference.

37. The '498 patent includes only two independent claims, *i.e.*, claims 1 and 10.

38. Neither HUBWOO, nor any other person or entity acting on its behalf, has performed in the United States, or is performing in the United States, any of the clearinghouse-related method steps of the '498 patent claims 1 or 10. Under 35 U.S.C. § 271(a), there can be no infringement of either of those method claims unless all of the method steps recited in those claims are performed in the United States.

39. Based on the foregoing, HUBWOO has not infringed, and is not infringing, either directly, indirectly, by contribution, or by inducement, or in any other way, independent claims 1 or 10 of the '498 patent, or any other claim of the '498 patent, either literally or under the doctrine of equivalents.

40. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 43-46 below and incorporate them herein by reference.

41. In addition, to the extent that any of the '498 patent claims might be construed to read on any of Plaintiffs' conduct as an infringement of any kind, Plaintiffs nonetheless have not infringed and do not infringe any claims of the '498 patent, either directly, indirectly, by

contribution, or by inducement, or in any other way, because all of the claims of the '498 patent are invalid, and invalid claims are not susceptible to being infringed.

42. There is a justiciable controversy between the parties regarding the alleged infringement of the '498 patent by HUBWOO and Plaintiffs are entitled to a declaratory judgment that will finally resolve this issue.

COUNT IV

(Declaratory Judgment of Invalidity of the '498 Patent)

43. Plaintiffs repeat and re-allege the allegations set forth in paragraphs 1 through 20 above and incorporate them herein by reference.

44. On information and belief, the claims of the '498 patent are invalid for failure to comply with one or more conditions for patentability set forth in the United States Patent Act, including, at least, in 35 U.S.C. §§ 102 and 103(a).

45. On information and belief, at least the following prior art renders claims 1-17 of the '498 patent invalid for anticipation and/or obviousness under 35 U.S.C. §§ 102 and 103(a):

(a) Commerce One, Inc.'s Commerce Chain Solution, including Commerce One BuySite software 4.0 and Commerce One MarketSite software 2.0 (released November 23, 1998);

(b) U.S. Patent No. 6,226,675 (true and correct copy attached as Exhibit "D");

(c) Glushko, "How XML Enables Internet Trading Communities and Marketplaces," Commerce One Working Paper (1999) (true and correct copy attached as Exhibit "E");

(d) Silverman, "Factoring As A Financing Device," Harvard Business Review pp. 594-609 (September 1949) (true and correct copy attached as Exhibit "Q");

(e) CheMatch.com. Outlook – 11/10/1999 – CMRICIS (true and correct copy attached as Exhibit "H");

- (f) "Commerce One Announces Shipment of New Release of Commerce Chain Solution" (Nov. 23, 1998) (true and correct copy attached as Exhibit "T");
- (g) U.S. Patent No. 5,893,076 (true and correct copy attached as Exhibit "J");
- (h) U.S. Patent No. 5,758,327 (true and correct copy attached as Exhibit "K");
- (i) U.S. Patent No. 6,094,642 (true and correct copy attached as Exhibit "L");
- (j) Federal Express Press Release of January 1997 (true and correct copy attached as Exhibit "M");
- (k) U.S. Patent No. 5,717,989 (true and correct copy attached as Exhibit "N");
- (l) U.S. Patent No. 7,165,041 (true and correct copy attached as Exhibit "R");
- (m) U.S. Patent No. 5,319,542 (true and correct copy attached as Exhibit "P");
- (n) Craig, Robert A., *et al.*, "Exchanging Material Safety Data Sheets via Electronic Data Interchange: A Prototype," Logistics Management Institute, June 1995 (true and correct copy attached as Exhibit "S"); and/or
- (o) U.S. Patent No. 5,311,438 (true and correct copy attached as Exhibit "T").

46. There is a justiciable controversy between the parties regarding the invalidity of the '498 patent and Plaintiffs are entitled to a declaratory judgment that will finally resolve this issue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Hubwoo SA, Hubwoo USA Inc., and Hubwoo USA, L.P. pray for the following relief:

- A. A declaratory judgment that the claims of the '107 patent are invalid;

B. A declaratory judgment that Plaintiffs have not infringed and do not infringe, either directly, indirectly, by contribution, or by inducement, or in any other way, any claim of the '107 patent, either literally or under the doctrine of equivalents;

C A declaratory judgment that Plaintiffs have not infringed and do not infringe, either directly, indirectly, by contribution, or by inducement, or in any other way, any claim of the '498 patent, either literally or under the doctrine of equivalents;

D. A declaratory judgment that the claims of the '498 patent are invalid;

E. That SCC be ordered to pay all costs associated with this action;

F. An order declaring Plaintiffs to be the prevailing party and that this is an exceptional case, and awarding Plaintiffs their costs, expenses, disbursements, and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; and

G. That Plaintiffs be granted any other relief that the Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury as to all matters to which it is entitled to trial by jury pursuant to Federal Rule of Civil Procedure 38.

Dated: August 16, 2011

Respectfully submitted,

By: /s/ Stephen L. Sulzer
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*Attorneys for Plaintiffs Hubwoo SA,
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CERTIFICATE OF SERVICE

On August 16, 2011, I certify that a copy of Plaintiff's Amended Complaint was served via certified U.S. mail, return receipt requested on the following attorney for Defendant Supply Chain Connect:

Todd Y. Brandt, Esq.
Stevens, Love, Hill & Holt, PLLC
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Longview, Texas 75601

/s/ Stephen L. Sulzer

Stephen L. Sulzer