

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JUN 21 PM 7:19

ACXIOM CORP.,

Plaintiffs,

v.

MUREX SECURITIES, LTD., MUREX
LICENSING CORP., and TARGUS
INFORMATION CORP.,

Defendants.

Civil Action No. _____
BY BK Johnson

COMPLAINT FOR
DECLARATORY RELIEF
DEMAND FOR JURY TRIAL

5:05-CV-0182 JLH

This case assigned to District Judge Holmes
and to Magistrate Judge Cavanau

For its Complaint, Plaintiff pleads as follows:

THE PARTIES

1. Plaintiff, Acxiom Corp. ("Acxiom"), is a corporation organized and existing under the laws of Delaware, having its principal place of business at 1 Information Way, Little Rock, Arkansas, 72202.

2. Upon information and belief, Defendant Murex Securities, Ltd. ("Murex Securities") is a company organized and existing under the laws of Isle of Man, with its principal place of business at 8 Myrtle Street, Douglas, Isle of Man. Murex Securities has, at times, done business as Murex Securities Inc.

3. Upon information and belief, Defendant Murex Licensing Corp. ("Murex Licensing") is a corporation organized and existing under the laws of Delaware, with its principal place of business at 8010 Towers Crescent Drive, Fifth Floor, Vienna, Virginia, 22182.

4. Upon information and belief, Defendant Targus Information Corp. (“Targus”) is a corporation organized and existing under the laws of Nevada, having a place of business at 12544 High Bluff Drive, Suite 400, San Diego, California 92130.

JURISDICTION AND VENUE

5. This is an action brought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and arises under the patent laws of the United States, 35 U.S.C. §1 et seq.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201.

7. This Court has personal jurisdiction over Murex Licensing, Murex Securities, and Targus (collectively “Defendants”) because this cause of action arises out of Defendants’ activities in this jurisdiction and Defendants’ activities that were purposefully directed toward residents of this forum, and because the exercise of such jurisdiction comports with traditional notions of fair play and substantial justice.

8. Venue is proper under 28 U.S.C. § 1391(b), because a substantial part of the events giving rise to the claims occurred in this judicial district, and 28 U.S.C. § 1391(d), because an alien may be sued in any district.

BACKGROUND

9. Murex Securities is the assignee and owner of record of U.S. Patent Nos. 6,748,426 (“the ‘426 patent”), 6,661,884 (“the ‘884 patent”), 6,608,892 (“the ‘892 patent”), 6,570,975 (“the ‘975 patent”), 6,385,312 (“the ‘312 patent”), 6,381,324 (“the ‘324 patent”),

6,185,290 (“the ‘290 patent”), 6,091,810 (“the ‘810 patent”), 6,058,179 (“the ‘179 patent”), 5,982,868 (“the ‘868 patent”), 5,956,397 (“the ‘397 patent”), 5,910,982 (“the ‘982 patent”), 5,907,608 (“the ‘608 patent”), 5,901,214 (“the ‘214 patent”), 5,848,131 (“the ‘131 patent”), and 5,506,897 (“the ‘897 patent”) (collectively “the Murex patents”).

10. Murex Licensing is the assignee and owner of record of U.S. Patent No. 4,757,267 (“the ‘267 patent”) (included in “the Murex patents”). True and correct copies of the Murex patents are attached hereto as Exhibits A through Q.

11. All the Murex patents except the ‘267 patent and the ‘426 patent belong to one of two patent families. The two patent families are referenced herein as “the ‘897 Patent Family” and “the ‘214 Patent Family.”

12. The ‘897 Patent Family includes the following Murex patents:

- The ‘897 patent;
- The ‘131 patent, which is continuation-in-part of the ‘897 patent;
- The ‘868 patent, which is a continuation-in-part of the ‘131 patent;
- The ‘982 patent, which purports to be a continuation of the ‘868 patent;
- The ‘608 patent, which purports to be a continuation of the ‘868 patent;
- The ‘397 patent, which purports to be a continuation of the ‘868 patent;
- The ‘810 patent, which purports to be a continuation of the ‘868 patent;

- The '312 patent, which is a continuation-in-part of the '868 patent;
- The '975 patent, which purports to be a continuation of the '312 patent; and
- The '892 patent, which purports to be a continuation of the '312 patent.

13. The '214 Patent Family includes the following Murex patents:

- The '214 patent;
- The '179 patent, which purports to be a continuation of the '214 patent;
- The '290 patent, which purports to be a continuation of the '179 patent;
- The '324 patent, which purports to be a continuation of the '290 patent; and
- The '884 patent, which purports to be a continuation of the '324 patent.

14. Murex Licensing is an exclusive licensee of the Murex patents except for the '267 patent, and purports to have the authority to sublicense and enforce the Murex patents.

15. Targus purports to have the right and authority to grant licenses to at least some of the Murex patents.

16. From March 31, 2000 through March 31, 2005, Acxiom and Targus were parties to a data sharing and patent licensing agreement ("the Targus/Acxiom Agreement") pursuant to which Acxiom obtained data it desired from Targus and pursuant to which Targus granted Acxiom a non-exclusive license to several of the Murex patents.

17. Acxiom has never had a need for the non-exclusive license contained in the Targus/Acxiom Agreement. Acxiom obtained that non-exclusive license from Targus only after Targus conditioned the data sharing aspects of the Targus/Acxiom Agreement on Acxiom's acceptance of the non-exclusive license.

18. In August 2004, Acxiom notified Targus that Acxiom would not renew the Targus/Acxiom Agreement.

19. On March 31, 2005, the non-exclusive license which Targus granted to Acxiom expired.

20. Acxiom is no longer paying royalties under the Targus/Acxiom Agreement.

21. On September 9 and 10, 2004, Michael M. Barry, Chief Patent Counsel for Murex Licensing, and who also serves as General Counsel for Targus, traveled to Conway, Arkansas, to meet with various representatives of Acxiom and, purportedly, to conduct an audit of Acxiom's activities in connection with expiration of the Targus/Acxiom Agreement.

22. James Shaffer, one of the inventors named in some of the Murex patents, and Dennis Ainge—who on information and belief is a sales representative employed by Targus, accompanied Mr. Barry to the audit.

23. During the September 9-10, 2004 meeting, Mr. Barry represented that at least one of Acxiom's services infringes Murex patents and that Acxiom required a license to the Murex patents. It was suggested during the meeting that Mr. Barry send a follow-up letter providing more information regarding the purported need for a license.

24. Mr. Barry's audit of Acxiom in Conway, Arkansas, spanned two days, and concluded on September 10, 2004.

25. On or about February 23, 2005, Acxiom received a letter from Mr. Barry. A true and correct copy of the letter is attached hereto as Exhibit R.

26. In this letter, Mr. Barry asserts that some of Acxiom's services require a license under patents owned by Murex.

27. The letter from Mr. Barry contains a purported infringement analysis for five of the Murex patents and includes claim charts purporting to explain how Acxiom technology uses some claims from the Murex patents.

28. The letter identifies all 17 of the Murex patents. Mr. Barry's letter also states that the claims identified in the claim charts "are illustrative and do not represent an exhaustive list or 'best claims'" and that the "purpose simply is to highlight that in order to provide real time data services as described on Acxiom's Web site or in Acxiom's patents, Acxiom will require a license under the Murex patents."

29. On or about March 18, 2005, during a follow-up telephone conversation between Mr. Barry and in-house counsel for Acxiom, the potential for licensing of the Murex patents was discussed. Mr. Barry stated that if Acxiom, in effect, tells him to "go pound sand" with respect to the licenses, Murex will sue.

30. As recently as January 27, 2005, Targus' corporate President, George G. Moore, one of the named inventors in the Murex patents, visited an Acxiom facility in Little Rock, Arkansas, for a meeting, and during the meeting, Mr. Moore stated to at least one Acxiom

representative that, if Acxiom does not obtain a license to the Murex patents, “we” need to come after you, and “we” may go after Acxiom’s customers as well.

31. On June 21, 2005, representatives for Murex Licensing and Murex Securities met with representatives from Acxiom to discuss the claim by Murex Licensing that Acxiom needs a license to the Murex patents.

32. Acxiom’s representatives stated during the June 21, 2005 meeting that Acxiom does not need a license to the Murex patents, and the representatives of Murex Licensing and Murex Securities refused to give Acxiom any assurances that Acxiom would not be sued over the Murex patents. The June 21, 2005 meeting ended with the parties at an impasse.

33. Upon information and belief, Murex Securities and Murex Licensing are currently attempting to enforce alleged rights in several of the Murex patents in case number 6:02-cv-1354-Orl-28-DAB, currently pending before the United States District Court for the Middle District of Florida, Orlando Division.

34. Acxiom continues to provide the services that Mr. Barry characterized as requiring a license under the Murex patents.

35. Based on Defendants’ activities and statements, Acxiom has a reasonable apprehension of legal action by Defendants (see Exhibit R, February 23, 2005 letter), and a live, justiciable, and actual controversy exists between Acxiom and the Defendants

36. Granting declaratory judgment would promote the goal of reducing the unnecessary uncertainty surrounding Murex’s allegations.

COUNT I

Declaratory Judgment of Invalidity

37. Acxiom hereby realleges and incorporates by reference paragraphs 1-36 above as if fully set forth herein.

38. There is a real and actual controversy between the parties with respect to the validity of the some or all of the Murex patents.

39. Claims of the Murex patents are invalid for one or more of the grounds set forth in 35 U.S.C. §§ 1 et seq., including §§ 101, 102, 103, and/or 112.

40. Accordingly, Acxiom requests a declaration that the Murex patents are invalid under 35 U.S.C. §§ 1 et seq., including §§ 101, 102, 103, and/or 112.

COUNT II

Declaratory Judgment of Non Infringement

41. Acxiom hereby realleges and incorporates by reference paragraphs 1-40 above as if fully set forth herein.

42. The claims of the Murex patents have not been infringed by any of Acxiom's services or activities.

43. Furthermore, by reason of the prior art and the proceedings in the USPTO during the prosecution of the Murex patents, Defendants are estopped, for any claim of the Murex patents, from asserting a scope that would cover any acts of Acxiom or give rise to a complaint for patent infringement.

44. Accordingly, Acxiom requests a declaration that the Murex patents are not infringed, either literally or under the doctrine of equivalents, by any of Acxiom's services or activities.

COUNT III

Declaratory Judgment of Unenforceability

45. Acxiom hereby realleges and incorporates by reference paragraphs 1-44 above as if fully set forth herein.

False or Misleading Designation of Continuation-in-Part Applications

46. M.P.E.P. § 201.07 states that "[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."

47. M.P.E.P. § 608.04(a) states that "[m]atter not in the original specification, claims, or drawings is usually new matter."

A. The '214 Patent Family

48. The application from which the '179 patent issued was filed as a continuation of the application from which the '214 patent issued.

49. The application from which the '179 patent issued was not filed as a continuation-in-part of the application from which the '214 patent issued.

50. The '290 patent, the '324 patent, and the '884 patent each claim priority through the '179 patent.

51. The '179 patent specification includes matter not present in the '214 patent specification.

52. The existence of new matter in the '179 patent becomes apparent when the text at column 17, line 12 through column 19, line 6 of the '179 patent is compared to the text at column 17, line 38 through column 19, line 8 of the '214 patent.

53. By filing a continuation application, rather than a continuation-in-part application, the applicant falsely represented to the U.S. Patent and Trademark Office that the disclosure of the application from which the '179 patent issued was the same as the disclosure of the application from which the '214 patent issued.

54. Upon information and belief, this false representation was both intentional and material, as the true priority date of the claims constituting new matter would have changed the temporal scope of the applicable prior art, thereby altering the parameters of the examination.

55. Applicant's misrepresentations to the U.S. Patent and Trademark Office ("USPTO") during prosecution of the '179 patent violated the uncompromising duty of candor that all applicants owe to the USPTO, constituted fraud and inequitable conduct, and render the '179 patent, and all patents claiming priority through the '179 patent, including the '290 patent, the '324 patent, and the '884 patent, unenforceable.

56. The application from which the '324 patent issued was filed as a continuation of the application from which the '290 patent issued, which in turn was filed as a continuation of the application from which the '179 patent issued, which in turn was filed as a continuation of the application from which the '214 patent issued.

57. The application from which the '324 patent issued was not filed as a continuation-in-part of the application from which the '290 patent issued, nor was the application for the '290 patent filed as a continuation-in-part of the application from which the '179 patent issued, nor was the application for the '179 patent filed as a continuation-in-part of the application from which the '214 patent issued.

58. The '179 patent, '290 patent, '324 patent, and '884 patent each claim priority to the '214 patent as continuations.

59. The '179 patent and '324 patent specifications include matter not present in the '214 patent specification.

60. The existence of new matter in the '179 patent and the '324 patent becomes apparent when the text at column 17, line 12 through column 19, line 6 of the '179 patent and the text at column 16, line 65 through column 18, line 62 of the '324 patent are compared to the text at column 17, line 38 through column 19, line 8 of the '214 patent.

61. By filing continuation applications, rather than a continuation-in-part applications, the applicant falsely represented to the U.S. Patent and Trademark Office that the disclosures of the applications from which the '179 patent and the '324 patent issued were the same as the disclosure of the application from which the '214 patent issued.

62. Upon information and belief, this false representation was both intentional and material, as the true priority date of the claims constituting new matter would have changed the temporal scope of the applicable prior art, thereby altering the parameters of the examination.

63. Applicant's misrepresentations to the U.S. Patent and Trademark Office ("USPTO") during prosecution of the '179 and '324 patent violated the uncompromising duty of candor that all applicants owe to the USPTO, constituted fraud and inequitable conduct, and render the '179 patent and '324 patent, and all patents claiming priority through the '179 patent, including the '290 patent and the '884 patent, unenforceable.

B. The '897 Patent Family

64. The application from which the '810 patent issued was filed as a continuation of the application from which the '868 patent issued, which in turn was filed as a continuation-in-part of the application from which the '131 patent issued, which in turn was filed as a continuation-in-part of the application from which the '897 patent issued.

65. The application from which the '810 patent issued was not filed as a continuation-in-part of the application from which the '868 patent issued.

66. The '810 patent specification includes matter not present in the '868 patent specification.

67. The existence of new matter in the '810 patent becomes apparent when the text in the Summary of the Invention (particularly after column 10, line 57) of the '810 patent is compared to the text in the Summary of the Invention (particularly after column 10, line 55) of the '868 patent.

68. By filing a continuation application, rather than a continuation-in-part application, the applicant falsely represented to the USPTO that the disclosure of the application from which

the '810 patent issued was the same as the disclosure of the application from which the '868 patent issued.

69. Upon information and belief, this false representation was both intentional and material, as the true priority date of the claims constituting new matter would have changed the temporal scope of the applicable prior art, thereby altering the parameters of the examination.

70. Applicant's misrepresentations to the USPTO during the prosecution of the '810 patent violated the uncompromising duty of candor that all applicants owe to the USPTO, constituted fraud and inequitable conduct, and render the '810 patent unenforceable.

71. The application from which the '312 patent issued was filed as a continuation-in-part of the application from which the '868 patent issued, and the application from which the '975 patent issued was filed as a continuation of the application from which the '312 patent issued.

72. The application from which the '975 patent issued not filed as a continuation-in-part of the application from which the '312 patent issued.

73. The '975 patent specification includes matter not present in the '312 patent specification.

74. The existence of new matter in the '975 patent becomes apparent when the text at column 5, line 53 through column 7, line 10 of the '975 patent is compared to the text at column 8, line 49 through column 11, line 21 of the '312 patent.

75. By filing a continuation application, rather than a continuation-in-part application, the applicant falsely represented to the examiner that the disclosure of the application from which the '975 patent issued was the same as the disclosure of the application from which the '312 patent issued.

76. Upon information and belief, this false representation was both intentional and material, as the true priority date of the claims constituting new matter would have changed the temporal scope of the applicable prior art, thereby altering the parameters of the examination.

77. Applicant's misrepresentations to the USPTO during the prosecution of the '975 patent violated the uncompromising duty of candor that all applicants owe to the USPTO, constituted fraud and inequitable conduct, and render the '975 patent unenforceable.

78. Much like the '975 patent, the application from which the '892 patent issued was filed as a continuation of the application from which the '312 patent issued.

79. The application from which the '892 patent issued was not filed as a continuation-in-part of the application from which the '312 patent issued.

80. The '892 patent specification includes matter not present in the '312 patent specification.

81. The existence of new matter in the '892 patent becomes apparent when the text at column 8, line 55 through column 10, line 50 of the '892 patent is compared to the text at column 8, line 49 through column 11, line 21 of the '312 patent.

82. By filing a continuation application, rather than a continuation-in-part application, the applicant falsely represented to the examiner that the disclosure of the application from which the '892 patent issued was the same as the disclosure of the application from which the '312 patent issued.

83. Upon information and belief, this false representation was both intentional and material, as the true priority date of the claims constituting new matter would have changed the temporal scope of the applicable prior art, thereby altering the parameters of the examination.

84. Applicant's misrepresentations to the USPTO during the prosecution of the '892 patent violated the uncompromising duty of candor that all applicants owe to the USPTO, constituted fraud and inequitable conduct, and render the '892 patent unenforceable.

85. Accordingly, Acxiom requests a declaration that some of the Murex patents, including at least the '179, '290, '324, '884, '810, '975, and '892 patents, are unenforceable.

Inequitable Conduct Based on False and/or Misleading Submissions/Omissions

86. False or misleading submissions and omissions were made to the USPTO during prosecution of the Murex patents. The false or misleading submissions were included in declarations and purported information disclosure statements.

A. The 1997 Shaffer Declaration

87. Upon information and belief, Targus engaged in commercialization of the subject matter claimed in several of the Murex patents when it sought to provide, and ultimately did provide, a drop box locator service for Federal Express ("FedEx").

88. Targus' commercialization of the claimed subject matter began more than one year before the applications for several of the Murex patents were filed.

89. At least one of the inventors named in the Murex patents, James D. Shaffer ("Inventor Shaffer"), was aware of the commercial activity during prosecution of the Murex patents.

90. Inventor Shaffer executed a Declaration on June 18, 1997 ("the 1997 Shaffer Declaration") purporting to describe Targus' use of subject matter claimed in several of the Murex patents in connection with providing a drop box locator service for Federal Express ("FedEx").

91. The 1997 Shaffer Declaration was submitted to the USPTO by applicants during prosecution of the '131 patent and the '312 patent (in the '897 Patent Family).

92. The 1997 Shaffer Declaration was also submitted to the USPTO by applicants during prosecution of the '214 patent, the '179 patent, the '290 patent, the '324 patent, and the '884 patent (all of the issued patents in the '214 Patent Family).

93. The 1997 Shaffer Declaration contains false and misleading statements and omissions that were made with the intention to deceive the USPTO in attempts by applicants to secure allowance of the patent claims, and such false and misleading statements and omissions were material to patentability.

94. As an example of the applicant's omissions, the 1997 Shaffer Declaration cites to certain documents, but only selectively chosen portions and pages of some of those documents were submitted to the USPTO.

95. In at least one instance, all the pages of a document were withheld from the USPTO except for the first and last page.

96. On information and belief, the omitted pages and the omitted portions of the documents contain evidence of extensive commercial dealings between Targus and FedEx.

97. As further examples of the false and misleading statements and omissions, the 1997 Shaffer Declaration repeatedly characterizes Targus' activities as:

- “field testing” and “pilot projects” (¶ 5);
- “pilot test,” “pilot system,” and “the test” (¶ 12);
- “pilot drop-box locator system” (¶ 13);
- “pilot testing the locator system,” “pilot drop-box locator testing,” “test,” “initial testing,” and “initial pilot testing phase” (¶ 14);
- “pilot testing,” “experimental and not field proven,” “FedEx drop-box locator system pilot,” and “still a developing technology” (¶ 15);
- “pilot test period,” “pilot testing,” “initial testing,” and “pilot test” (¶ 16);
- “first pilot testing,” “pilot testing,” and “items that were tested,” (¶ 17);
- “pilot tests,” “pilot testing,” and “During pilot testing” (¶ 18);

- “pilot test period began,” “the testing period,” “pilot test FedEx drop-off locations,” “pilot testing,” “very complex tests of newly developed technology,” and “test system” (§ 19);
- “working on the test under the direction of the inventors,” “the pilot test period,” “test results,” “extending and expanding the test,” “FedEx also expressed their wish to . . . evaluate results from that further testing before they considered the system operational,” “pilot test,” and “services necessary to perform the testing” (§ 20);
- “very complex test of enhancements” (§ 21);
- “the test period” and “end of the pilot test” (§ 22);
- “the test” and “testing” (§ 23);
- “subsequent pilot testing phase,” “pilot test phase,” “pilot test,” and “post-testing contract” (§ 25);
- “test period,” “pilot program,” and “the testing” (§ 26);
- “test phase (of the pilot test)” and “test network” (§ 27);
- “testing period” (§ 28);
- “pilot test period” and “test was shut down” (§ 30);
- “test network configuration,” “test network costs,” “the test,” “test period,” “testing,” and “pilot test period” (§ 31);

- “pilot testing,” “further test coordination,” “guide the testing,” “test results,” and “testing” (¶ 32);
- “testing” (¶ 34); and
- “pilot testing” and “At no time was the DART system ever fully operational.” (¶ 35).

98. It is false and misleading for Mr. Shaffer to characterize the service and system Targus provided to FedEx as merely a pilot or test system.

99. Material and significant aspects of Targus’ commercial use of its invention were omitted from the 1997 Shaffer Declaration.

100. On information and belief, FedEx incorporated Targus’ call processing service as part of FedEx’s call processing center for Chicago, Illinois more than one year before the filing date for each of the Murex patents except for the ‘897 patent and the ‘267 patent. Thousands of customers utilized the service to locate the drop boxes that were nearest to their respective locations.

101. The callers using Targus’ call processing service were not told that this capability was part of a “new” “experimental” or “pilot” service.

102. On information and belief, Targus maintained records of each call that utilized the call processing service, and generated invoices to FedEx on behalf of Targus and AT&T American Transtech (“ATI”), as specified in one or more contracts between Targus/ATI and FedEx.

103. Targus and FedEx added Sacramento, California to the drop-box locator system in 1995.

104. FedEx agreed to pay Targus for the use of the drop-box locator system.

105. FedEx received invoices that included fees for use of the drop-box locator system.

106. Targus accounted for payments from FedEx as gross sales in a Summary Report dated January 3, 1996, including four payments from FedEx totaling over \$35,000.

107. A payment in the amount of \$23,662.54 on "Fed Ex inv. #20081" was included in the Summary Report and was identified as deposited on May 22, 1995, more than one year before the effective filing date of each of the Murex patents except for the '267 patent and the '897 patent.

108. Applicants during prosecution of the Murex patents committed fraud on the USPTO and inequitable conduct when they submitted the 1997 Shaffer Declaration, repeatedly mischaracterizing clearly commercial activities as "experimental" and when they withheld key documents evidencing commercial sales in order to avoid the USPTO's suspicions as to unpatentability.

109. Applicant's misrepresentations to the USPTO during the prosecution of the '214 patent, the '179 patent, the '290 patent, the '324 patent, the '884 patent, the '131 patent, and the '312 patent violated the uncompromising duty of candor that all applicants owe to the USPTO, constituted fraud and inequitable conduct, and render those patent unenforceable.

110. The inequitable conduct committed during prosecution of the '131 patent infects and renders unenforceable the genealogically related and subsequently filed '868 patent, '982 patent, '608 patent, '397 patent, '810 patent, '312 patent, '975 patent, and '892 patent.

111. The inequitable conduct committed during prosecution of the '214 patent infects and renders unenforceable the genealogically related and subsequently filed '179 patent, '290 patent, '324 patent, and '884 patent.

B. The Supplemental Information Disclosure Statement

112. Targus developed telephone routing systems that were used during the spring of 1992 in Jacksonville, Florida and Harrisburg, Pennsylvania ("the Jacksonville/Harrisburg activities").

113. A Supplemental Information Disclosure Statement was filed by applicants during prosecution of the '131 patent, the '868 patent, the '982 patent, and the '397 patent in the '897 Patent Family and during prosecution of the '290 patent, the '324 patent, and the '884 patent in the '214 Patent Family.

114. The Supplemental Information Disclosure Statement purports to describe the activities undertaken by Targus in developing the telephone routing systems that were used in Jacksonville and Harrisburg.

115. The Supplemental Information Disclosure Statement was not submitted to the USPTO for consideration during prosecution of the '897 patent, even though the Jacksonville/Harrisburg activities predated the filing date of the '897 patent.

116. The Supplemental Information Disclosure Statement was not submitted to the USPTO for consideration during prosecution of the '214 patent and '179 patent, even though the Jacksonville/Harrisburg activities predate the filing dates of the '214 patent and the '179 patent by more than one year.

117. The information cited in the Supplemental Information Disclosure Statement was material to patentability, and was withheld from the USPTO by the applicants with intent to deceive during prosecution of the '897 patent, the '214 patent, and the '179 patent.

118. On information and belief, the description of the Jacksonville and Harrisburg activities in the Supplemental Information Disclosure Statement was false and misleading, and such activities constitute material prior art to claims in the Murex patents, except for the '267 patent.

119. The false and misleading statements and the omissions relating to the Supplemental Information Disclosure Statement constitute inequitable conduct in the procurement of the '897 patent, the '214 patent, and the '179 patent.

120. Applicant's misrepresentations to the USPTO during prosecution of the '131 patent, the '868 patent, the '982 patent, the '397 patent, the '290 patent, the '324 patent, and the '884 patent violated the uncompromising duty of candor that all applicants owe to the USPTO, constituted fraud and inequitable conduct, and render those patent unenforceable.

121. The inequitable conduct committed during prosecution of the '897 patent infects and renders unenforceable the genealogically related and subsequently filed '131 patent, '868

patent, '982 patent, '608 patent, '397 patent, '810 patent, '312 patent, '975 patent, and '892 patent.

122. The inequitable conduct committed during prosecution of the '214 and '179 patents infects and renders unenforceable the genealogically related and subsequently filed '290 patent, '324 patent, and '884 patent.

C. The 1998 Shaffer Declaration

123. Targus engaged in activities with ATI, Acxiom and AT&T regarding intelligent call processing systems that were developed and commercially used during approximately December 1993 through March 1996.

124. Targus' commercialization of the claimed subject matter began more than one year before the applications for several of the Murex patents were filed.

125. At least one of the inventors named in the Murex patents, Mr. Shaffer, was aware of the commercial activity during prosecution of the Murex patents.

126. Inventor Shaffer executed a Declaration on September 18, 1998 ("the 1998 Shaffer Declaration") purporting to describe the activities undertaken by Targus, ATI, Acxiom, and AT&T regarding the intelligent call processing systems.

127. Material and significant aspects of Targus' commercial use of its invention were omitted from the 1998 Shaffer Declaration.

128. The 1998 Shaffer Declaration also contains false and misleading statements and omissions that were made with the intention to deceive the USPTO in attempts by applicants to

secure allowance of the patent claims. Such false and misleading statements and omissions were material to patentability.

129. The 1998 Shaffer Declaration falsely and misleadingly characterizes the commercial activities as a “pilot” test in order to avoid having the activities considered as prior art.

130. The fifth numbered paragraph in the 1998 Shaffer Declaration, for example, mischaracterizes Targus’ activities as follows: “During a twenty month test period from approximately August 1994 to March 1996, test transaction usage as part of the AT&T pilot program was conducted. The specific test transactions involved AT&T computers . . .”

131. The 1998 Shaffer Declaration fails to disclose substantial payments from AT&T relating to the Acxiom/AT&T system that were posted as gross sales during the August 1994 to March 1996 period.

132. Targus accounted for payments from AT&T as gross sales in a Summary Report dated January 3, 1996, including six payments from AT&T totaling more than \$20,000.

133. It is false and misleading for Mr. Shaffer to characterize the service and system Targus provided to AT&T as merely “test transaction usage” or a “pilot program.”

134. During prosecution of the ‘312 patent and during prosecution of all the Murex patents in the ‘214 Patent Family, applicants committed fraud on the USPTO and inequitable conduct when they submitted the 1998 Shaffer Declaration, repeatedly mischaracterizing clearly commercial activities as “test transaction usage” or a “pilot program.”

135. Applicant's misrepresentations to the USPTO in connection with the 1998 Shaffer Declaration violated the uncompromising duty of candor that all applicants owe to the USPTO, constituted fraud and inequitable conduct, and render those patents unenforceable.

136. The 1998 Shaffer Declaration was submitted to the USPTO by applicants during prosecution of the '312 patent (in the '897 Patent Family).

137. The inequitable conduct committed during prosecution of the '312 patent as a result of the 1998 Shaffer Declaration infects and renders unenforceable the genealogically related and subsequently filed '975 patent and '892 patent.

138. The 1998 Shaffer Declaration was also submitted to the USPTO by applicants during prosecution of the '214 patent, the '179 patent, the '290 patent, the '324 patent, and the '884 patent (in the '214 Patent Family).

139. The inequitable conduct committed during prosecution of each patent in the '214 Patent Family as a result of the 1998 Shaffer Declaration infects and renders unenforceable the genealogically related and subsequently filed patents in the same '214 Patent Family.

Evidence of Inequitable Conduct in Other Litigation

140. On information and belief, additional bases and evidence of inequitable conduct reside in the discovery and in the court filings in *Murex Securities Ltd. et al. v. Vicinity Corp. et al.*, Civ. Action No. 01-1895-A (E.D. Va.), including for example, Docket Entry Nos. 81, 82, 89, 111 and 112, and their associated exhibits.

141. Defendants Murex Securities and Murex Licensing have had access to the discovery and court filings in *Murex Securities Ltd. et al. v. Vicinity Corp. et al.*, Civ. Action No. 01-1895-A (E.D. Va.), including the aforementioned Docket Entry Nos. 81, 82, 89, 111 and 112. Some of that information was filed under seal and/or is not available to Acxiom.

142. After Acxiom obtains the benefit of discovery in this litigation, Acxiom may plead, if necessary, additional instances of inequitable conduct in the procurement of the Murex patents.

Infectious Unenforceability

143. Under the doctrine of infectious unenforceability, all of the Murex patents are infected by, and rendered unenforceable as a result of, the inequitable conduct committed during procurement of other ones of the Murex patents.

144. The doctrine of infectious unenforceability applies to all of Murex's patents because the subject matter disclosed in the Murex patents is closely related and because Murex has undertaken to enforce and license the Murex patents together. Murex representatives have gone so far as to assert that the totality of these patents require all who practice reverse phone append ("RPA") processes to obtain a license.

145. Accordingly, all of the Murex patents are unenforceable.

Unenforceability Due to Prosecution Laches

A. The '214 Patent Family

146. The '214 patent claims priority from a provisional patent application filed on June 10, 1996. The application that issued as the '290 patent claims priority through the '214 patent and was filed on January 4, 2000, almost three years and 7 months after the '214 patent's provisional application was filed. The application that issued as the '324 patent claims priority through the '214 patent and was filed on October 17, 2000, more than four years after the '214 patent's provisional application was filed. The application that issued as the '884 patent claims priority through the '214 patent and was filed on February 22, 2002, more than five years and 8 months after the '214 patent's provisional application was filed.

147. The unreasonable and unexplained delay in seeking and obtaining the claims of the '290, '324, and '884 patents caused harm to Acxiom and other members of the public.

148. The unreasonable and unexplained delays constitute prosecution laches and render the '290, '324, and '884 patents unenforceable.

B. The '897 Patent Family

149. The '897 patent was filed on December 28, 1994 as a purported continuation of an abandoned patent application filed on February 22, 1993. The applications that issued as the '982, '608, '397, and '312 patents all claim priority to the abandoned application through the '897 patent, and were filed on June 19, 1998, almost five years and 4 months after the abandoned application's filing date. The application that issued as the '810 patent claims priority to the abandoned application through the '897 patent, and was filed on December 14, 1998, almost 5

years and 10 months after the abandoned application's filing date. The application that issued as the '975 patent claims priority to the abandoned application through the '897 patent, and was filed on January 18, 2002, almost 8 years and 11 months after the abandoned application's filing date. The application that issued as the '892 patent claims priority to the abandoned application through the '897 patent, and was filed on February 1, 2002, more than 8 years and 11 months after the abandoned application's filing date.

150. The unreasonable and unexplained delay in seeking and obtaining the claims of the '982, '608, '397, '810, '312, '975 and '892 patents caused harm to Acxiom and other members of the public.

151. The unreasonable and unexplained delays constitute prosecution laches and render the '982, '608, '397, '810, '312, '975 and '892 patents unenforceable.

152. Accordingly, Acxiom requests a declaration that all of the Murex patents are unenforceable.

PRAYER FOR RELIEF

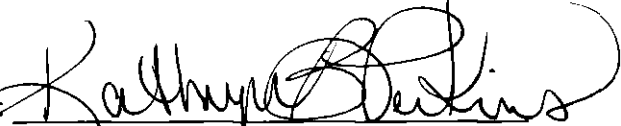
WHEREFORE, Acxiom demands judgment against Murex Securities, Murex Licensing, and Targus and respectfully requests the following relief:

- A. A declaration that the Murex patents are invalid;
- B. A declaration that the Murex patents are not-infringed by any of Acxiom's services or activities;
- C. A declaration that certain of the Murex patents are unenforceable for inequitable conduct;
- D. An order enjoining Murex Securities, Murex Licensing, and Targus, their officers, agents, servants, and all persons acting in concert or participation with any of them, from charging infringement of or instituting any action alleging infringement of the Murex patents against Acxiom, its affiliates, and its customers for the manufacture, use, sale, and offer for sale of any of Acxiom's services or activities;
- E. An award of attorney fees and costs for this suit;
- F. Such other and further relief that the Court may deem just and proper.

Dated: June 21, 2005

Respectfully submitted,

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS

Attachments
to original
Document in
Court's Case File

3 volumes

Exhibits A-R