

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

FIVE STAR QUALITY CARE, INC.,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. _____
)	
WEBVENTION HOLDINGS LLC and)	JURY TRIAL DEMANDED
WEBVENTION LLC,)	
)	
Defendants.)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Five Star Quality Care, Inc. (“Five Star”) files this complaint for declaratory judgment against Defendants Webvention Holdings LLC and Webvention LLC (collectively “Webvention”) and alleges as follows:

THE PARTIES

1. Five Star is a Maryland corporation having a principal place of business at 400 Centre Street, Newton, MA 02458-2076. Five Star regularly engages in business in this judicial district.

2. Webvention Holdings LLC is a Delaware limited liability company and the parent company of Webvention LLC. Webvention Holdings LLC can be served with process through its registered agent Business Filings Incorporated, 108 West 13th Street, Wilmington, Delaware 19801.

3. Webvention LLC is wholly-owned by Webvention Holdings LLC and a Texas limited liability company with its principal place of business at 505 East Travis Street, Suite 209, Marshall, Texas 75670. Webvention LLC can be served with process through its registered agent Capitol Corporate Services, Inc., 800 Brazos Street, Suite 400, Austin, Texas 78701.

4. Webvention LLC is the owner and assignee of U.S. Patent No. 5,251,294 (“the ’294 Patent”) entitled “Accessing, assembling, and using bodies of information,” which issued October 5, 1993. A true and correct copy of the ’294 Patent is attached hereto as Exhibit A.

5. According to the Certificate of Formation of Webvention LLC, dated November 3, 2009, Webvention Holdings LLC is the manager of Webvention LLC.

6. According to the Agreement and Plan of Merger, dated November 9, 2009, through which, upon information and belief, Webvention LLC obtained the ’294 Patent, Webvention Holdings LLC is the agent of Webvention LLC.

7. According to the Agreement and Plan of Merger, “Webvention Holdings LLC, a Delaware LLC is the sole member of each of the Constituent Companies,” Ferrara and Webvention.

8. According to the Agreement and Plan of Merger, “As of the effective date of the merger Webvention Holdings LLC shall remain the sole member of the surviving company,” Webvention LLC.

9. Webvention Holdings LLC executed the Agreement and Plan of Merger as the only manager and member of Webvention LLC.

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), in that it involves substantial claims arising under the United States Patent Act, 35 U.S.C. § 1 *et. seq.*

11. This Court may declare the rights and other legal relations of the parties pursuant to the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, because there is a case

of actual controversy within the Court's jurisdiction to provide a declaratory judgment that Five Star does not infringe the '294 Patent.

12. Webvention Holdings LLC is subject to personal jurisdiction in Delaware because Webvention Holdings LLC has submitted itself to the jurisdiction of courts in Delaware by virtue of its incorporation under Delaware law.

13. Upon information and belief, Webvention LLC is subject to personal jurisdiction in Delaware because, *inter alia*, Webvention Holdings LLC, which is incorporated in Delaware, is the parent of Webvention LLC, is the agent of Webvention LLC, exercises control over Webvention LLC, is the sole member Webvention LLC, and created Webvention LLC for the purpose of owning and enforcing the '294 Patent.

14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c).

THE PRESENCE OF AN ACTUAL CONTROVERSY

15. On August 27, 2010, Todd Schmidt of Webvention LLC sent a letter to Travis K. Smith, the General Counsel of Five Star. A copy of this letter is attached hereto as Exhibit B.

16. The August 27, 2010 letter stated that "[w]e have reviewed Five Star Quality Care, Inc.'s website at www.fivestarseniorliving.com, and have prepared the enclosed claim chart demonstrating how the website utilizes claims 28, 37, and 40 of the '294 Patent. The screen shots used in the charts are representative only. In addition to the charted claims, you should consider claims 29, 31-33, 41-44, 47, 53, 55, and 64. Depending on how the website was constructed, claims 1-8, 12-21, and 78 may also be utilized during the design and programming of the website, as well as other internal systems to organize and access information."

17. Five Star is the registrant of, operates, and has control over or rights to the contents of www.fivestarseniorliving.com.

18. The August 27, 2010 letter stated that “[f]or the next 45 days, Webvention is willing to license the ’294 Patent for a one-time, fully paid-up licensing fee of \$80,000.00 for a non-exclusive, company-wide right to use Webvention’s technology.”

19. In subsequent conversations with Mr. Smith, Webvention LLC extended that period to November 5, 2010.

20. The August 27, 2010 letter stated that Webvention has “retained The Davis Firm, P.C. (www.bdfirm.com) based in Longview, Texas, to assist the company in the licensing of the ’294 Patent.”

21. The August 27, 2010 letter stated that “Webvention Licensing LLC reserves all rights with regard to the ’294 Patent, including: (1) the right to seek damages anytime within the last six years that your company started to make use of Webvention’s patented technology.”

22. On July 20, 2010, Webvention filed a lawsuit against 19 companies alleging infringement of the ’294 Patent. That case is styled *Webvention LLC v. Abercrombie & Fitch, Co., et al.*, Case No. 2:10-cv-253-TJW-CE and is pending in the Eastern District of Texas, Marshall Division.

23. On October 5, 2010, Webvention filed a lawsuit against 20 companies alleging infringement of the ’294 Patent. That case is styled *Webvention LLC v. Adidas America Inc., et al.*, Case No. 2:10-cv-410-DF and is pending in the Eastern District of Texas, Marshall Division.

24. Seven companies have filed suits in the District Court for the District of Delaware requesting declaratory judgment relief from Webvention’s allegations of patent infringement. Those cases are styled *Novartis Corp. v. Webvention Holdings LLC and Webvention LLC*, Case No. 1:10-cv-793-GMS (filed Sept. 17, 2010); *Tenneco Automotive Operating Co., Inc. v. Webvention Holdings LLC and Webvention LLC*, Case No. 1:10-cv-824-GMS (filed Sept. 28,

2010, subsequently settled and dismissed); *Randstad Holding, N.V. v. Webvention Holdings LLC and Webvention LLC*, Case No. 1:10-cv-877-GMS (filed Oct. 13, 2010); *Trimas Corp. v. Webvention Holdings LLC and Webvention LLC*, Case No. 1:10-cv-881-GMS (filed Oct. 14, 2010); *Instinet Inc. v. Webvention Holdings LLC and Webvention LLC*, Case No. 1:10-cv-888-GMS (filed Oct. 15, 2010); *American Apparel, Inc. v. Webvention Holdings LLC and Webvention LLC*, Case No. 1:10-cv-936 (filed Nov. 1, 2010); *1-800 Contacts, Inc. v. Webvention Holdings LLC and Webvention LLC*, Case No. 1:10-cv-942 (filed Nov. 3, 2010).

25. Upon information and belief, Webvention LLC is solely a licensing entity, and without enforcement, it receives no benefits from the '294 Patent.

26. Therefore, an actual controversy exists between Five Star and Webvention with respect to whether Five Star's website www.fivestarseniorliving.com infringes the '294 Patent.

27. Five Star reasonably believes that, under all the circumstances, there is a substantial controversy between Five Star and Webvention of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

**COUNT I
DECLARATORY JUDGMENT OF NONINFRINGEMENT**

28. The allegations of paragraphs 1-27 above are incorporated by reference as if fully set forth herein.

29. Five Star's website www.fivestarseniorliving.com does not infringe any claim of the '294 Patent.

30. The '294 Patent includes 15 independent claims: claims 1, 2, 22, 28, 58, 59, 64, and 70 through 77.

31. Independent claims 1 and 74 of the '294 Patent recite "assembling said customized body of information in response to choices of information segments made by said user."

32. Five Star's www.fivestarseniorliving.com website does not assemble a customized body of information in response to choices of information segments made by said user.

33. Independent claims 2 and 75 of the '294 Patent recite "simultaneously while displaying said information content of a segment corresponding to a label to which the user is pointing, displaying information content for a segment corresponding to a label to which the user had previously pointed."

34. Five Star's www.fivestarseniorliving.com website does not simultaneously display any information content for a segment corresponding to where a user is pointing and information content for a segment corresponding to a location to which the user had previously pointed.

35. Independent claims 22 and 76 of the '294 Patent recite "adjusting the boundaries of at least one of said segments."

36. Five Star's www.fivestarseniorliving.com website does not adjust the boundaries of any segments.

37. Independent claims 28 and 77 of the '294 Patent recite "labels being displayed in an organized model reflecting relationships among information contents of said corresponding segments."

38. Independent claim 58 of the '294 Patent recites "labels being arranged in an organized model reflecting relationships among corresponding said segments."

39. Five Star's www.fivestarseniorliving.com website does not display or arrange any purported labels in an organized model reflecting relationships among information contents of said corresponding segments or among corresponding said segments.

40. Independent claims 59 and 70 of the '294 Patent recite actions that must be taken "in response to a user requesting assistance in the course of using said program."

41. Five Star's www.fivestarseniorliving.com website does not take any action in response to a user's request for assistance, or allow for a user to request assistance.

42. Independent claims 64 and 71 of the '294 Patent recite taking action "in response to user commands."

43. Five Star's www.fivestarseniorliving.com website does not allow for a user to give commands, or to take any action in response to user commands.

44. Independent claims 72 and 73 of the '294 Patent recite "altering the organization of the labels in accordance with a revision of said model in response to said second user."

45. Five Star's www.fivestarseniorliving.com website does not provide for altering the organization of any part of the website in response to a user.

46. For these reasons and for other reasons, Five Star's www.fivestarseniorliving.com website does not infringe either directly or indirectly any claim of the '294 Patent.

**COUNT II
DECLARATORY JUDGMENT OF INVALIDITY**

47. The allegations of paragraphs 1-46 above are incorporated by reference as if fully set forth herein.

48. One or more claims of the '294 Patent are invalid for failure to comply with one or more of the conditions for patentability set forth in 35 U.S.C. §§ 101, 102, 103, and 112.

49. One or more claims of the '294 Patent are invalid for, among other reasons, the reasons set forth in the Request For Ex Parte Re-Examination of the '294 Patent assigned control number 90/011,208 by the United States Patent And Trademark Office ("USPTO") and submitted on September 7, 2010.

50. One or more claims of the '294 Patent are invalid for, among other reasons, the reasons set forth in the Request For Ex-Parte Re-Examination of the '294 Patent assigned control number 90/011,229 by the USPTO and filed on September 13, 2010.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Five Star prays that:

- A. The Court declare that Five Star does not infringe the '294 Patent;
- B. The Court declare that one or more of the claims of the '294 Patent is invalid;
- C. The Court issue a permanent injunction prohibiting Webvention and anyone acting in privity or in concert with Webvention from charging infringement or instituting any legal action for infringement of the '294 Patent against Five Star or anyone acting in privity with Five Star;
- D. Five Star be awarded its costs in this action;
- E. Five Star be awarded its attorneys fees pursuant to 35 U.S.C. § 285; and
- F. Five Star be awarded such other and further relief as this Court deems is just and proper.

DEMAND FOR A JURY TRIAL

Five Star hereby demands a trial by jury in this action.

Respectfully submitted,

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Dated: November 5, 2010
988630 / 36195

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