

FILED *LR*

NOV 25 2003

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

LARRY W. PROPPES, CLERK
CHARLESTON, SC

Monolith Software Solutions, Inc. and)
J.E.M. Restaurant Group, Inc.,)
)
Plaintiffs,)
)
v.)
)
B-50 Data Solutions and B-50.com, LLC,)
)
Defendants.)
_____)

Civil Action No.: _____

2 03 37 25 18

COMPLAINT

Plaintiffs, Monolith Software Solutions, Inc. and J.E.M. Restaurant Group, Inc.,
allege upon information and belief as to all matters, as follows:

NATURE OF THE CASE

1. This is an action seeking a declaratory judgment that U.S. Patent No. 6,633,851 (“the ‘851 patent”) is invalid, unenforceable and not infringed by Plaintiffs, Monolith Software Solutions, Inc. and J.E.M. Restaurant Group, Inc. (hereinafter referred to collectively as “Monolith”). Upon information and belief, the ‘851 patent is currently the property of Defendant B-50 Data Solutions and/or Defendant B-50.com, LLC. The ‘851 patent is related to Defendants’ F.I.R.S.T. restaurant management software providing a method of generating custom reports based on restaurant point-of-sale data transferred between multiple remote computing devices and a central device, including a specific method of providing point-of-sale data via a web-based user interface with report generating features.

THE PARTIES

2. Plaintiffs Monolith Software Solutions, Inc. and J.E.M. Restaurant Group, Inc. are South Carolina corporations having their principal place of business at 2 Wharfside Street, Charleston, South Carolina 29401. Monolith is a developer, manufacturer and distributor of software, including software that Defendants have accused of infringing the '851 patent.

3. Upon information and belief, Defendant B-50 Data Solutions is a Minnesota company operating under the assumed name B-50 Data Solutions having its principal place of business at 965 Decatur Avenue North, Golden Valley, Minnesota 55427 and being operating by B-50.com, LLC a limited liability company with its principal place of business in Minneapolis, Minnesota and/or Golden Valley, Minnesota.

JURISDICTION AND VENUE

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the patent laws of the United States, Title 35, U.S.C., and common law. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 1338.

5. This Court has personal jurisdiction over Defendants who routinely market and sell their products in the State of South Carolina.

6. Venue is proper in the District of South Carolina pursuant to 28 U.S.C. § 1391.

COUNT FOR DECLARATORY JUDGMENT

7. Monolith develops, manufactures, and distributes software in South Carolina

for use by restaurants and offers their software products for sale to customers in South Carolina and throughout the United States.

8. Beginning in February of 2003, Monolith was notified by Bruce Clark, CEO of B-50 Data Solutions of Defendants' claims that software of Monolith infringed the '851 patent owned by Defendants. Additional correspondence from Bruce Clark continued to be sent to Plaintiffs alleging their infringement of the '851 patent.

9. After Defendants' claims regarding Monolith's infringement of the '851 patent, Monolith has continued to offer its software for sale in the United States.

10. The design, manufacture, distribution, sale and use of Monolith's software does not directly infringe any valid claim of the '851 patent.

11. Monolith does not contribute to or induce the infringement by any other party of any claim in the '851 patent.

12. Each of the claims of the '851 patent is invalid for failure to comply with one or more of the requirements of Title 35, United States Code, including but not limited to, 35 U.S.C. §§ 102, 103, 112.

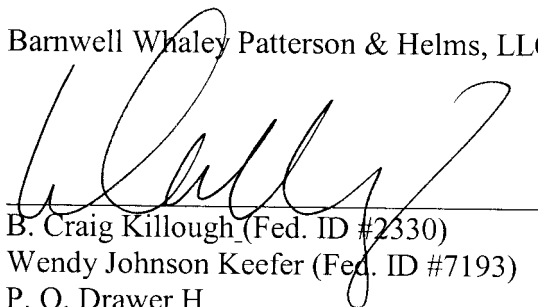
13. The '851 patent is unenforceable due to inequitable conduct resulting from statements or omissions made by Defendants or their agents during prosecution of the applications that led to the '851 patent in the United States Patent & Trademark Office" ("the Patent Office").

WHEREFORE, Monolith prays for:

- A. A Declaratory Judgment that neither Plaintiff is liable for directly, contributorily or inducing infringement of any claims of the '851 patent;

- B. A Declaratory Judgment that each of the claims of the '851 patent is invalid;
- C. A Declaratory Judgment that each of the claims of the '851 patent is unenforceable due to inequitable conduct by Defendants in prosecuting the patent application that led to the patent in the Patent Office;
- D. An injunction requiring Defendants and its officers, agents, employees, representatives, counsel and all persons in active concert or participation with any of them, directly or indirectly, be enjoined from threatening or charging infringement of the '851 patent, or instituting any action for infringement of the '851 patent, against Monolith or J.E.M. or any of their agents, representatives, officers, shareholders, directors, customers, suppliers, distributors or users of its products.
- E. Plaintiffs' costs and reasonable attorneys' fees incurred in this action; and
- F. Such further relief as the Court may deem just and proper.

Barnwell Whaley Patterson & Helms, LLC



B. Craig Killough (Fed. ID #2330)
Wendy Johnson Keefer (Fed. ID #7193)
P. O. Drawer H
Charleston, SC 29402-0197
(843) 577-7700
(843) 577-7708 (Facsimile)

ATTORNEYS FOR PLAINTIFFS

Dated: 11/24/03