

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

POLYCOM, INC. and POLYCOM ISRAEL,
LTD.,

Plaintiffs,

vs.

CODIAN LTD. AND CODIAN INC.,

Defendants.

Civil Action No. 2-05CV-520 DF

JURY

CODIAN LTD. AND CODIAN INC.,

Counterclaim Plaintiffs,

vs.

POLYCOM, INC. and POLYCOM ISRAEL,
LTD.,

Counterclaim Defendants.

SECOND AMENDED COMPLAINT

FOR PATENT INFRINGEMENT AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs and Counterclaim Defendants Polycom, Inc. (“Polycom”) and Polycom Israel, Ltd. (“Polycom Israel”), for their Second Amended Complaint against Defendants and Counterclaim Plaintiffs Codian Ltd. (“Codian”) and Codian Inc. (“Codian US”), allege as follows:

INTRODUCTION

1. Polycom is an industry leader in group and personal video systems, video and voice collaboration infrastructures, and conference phones. Polycom indirectly owns Polycom

Israel. Polycom and its corporate affiliates, such as Polycom Israel, have spent approximately \$1 billion developing innovative technologies for cutting edge video and voice collaboration infrastructures, and currently have over 500 patents and pending applications worldwide. Codian and its United States subsidiary, Codian US, are recent entrants to the videoconferencing market. Polycom and Polycom Israel are informed and believe, and thereon allege, that Codian and Codian US are using plaintiffs' patented inventions in their own videoconferencing products offered for sale and sold in the United States, without seeking or obtaining a license from Polycom or Polycom Israel. This action seeks redress for defendants' infringing activities.

PARTIES

2. Polycom is a Delaware corporation with its principal place of business in Pleasanton, California.

3. Polycom Israel is an Israeli corporation with its principal place of business in Petach Tikva, Israel. Polycom Israel is indirectly owned by Polycom.

4. Plaintiffs are informed and believe, and thereon allege, that Codian is a company registered under the laws of England and Wales with its principal place of business at 14 Waterside Drive, The Courtyards, Langley, Slough, Berks, UK SL3 6EZ.

5. Plaintiffs are informed and believe, and thereon allege, that Codian US is a corporation organized and existing under the laws of California with its principal place of business at 1570 The Alameda #216, San Jose, CA 95126. Plaintiffs are informed and believe, and thereon allege, that Codian US is the United States subsidiary and branch office of Codian and acts as an agent of Codian in the United States. Plaintiffs are informed and believe, and thereon allege, that Codian US offers to sell and sells videoconferencing products through a variety of resellers or distributors located in different states, including the State of Texas.

6. Plaintiffs are informed and believe, and thereon allege, that Codian and its wholly owned subsidiary Codian US work together as a single integrated entity for the purpose of making, using, selling, offering to sell, and importing videoconferencing products. Plaintiffs are informed and believe, and thereon allege, that Codian and Codian US have overlapping officers

and executives, and that Mark Richer, David Holloway, and William MacDonald, the directors of Codian, serve as the management team for both Codian and Codian US.

JURISDICTION AND VENUE

7. This is an action for patent infringement arising under the United States Patent Act, 35 U.S.C. § 101 *et seq.*

8. Plaintiffs are informed and believe, and thereon allege, that defendants have done and continue to do business in this District. Plaintiffs are informed and believe, and thereon allege, that defendants have sold and continue to offer for sale and sell infringing products in this District. Plaintiffs are informed and believe, and thereon allege, that Codian maintains a website accessible to the residents of this District, and that Codian's website encourages users in this District to contact Codian and Codian US so that they can recommend distributors and resellers from which to purchase their products. Plaintiffs are informed and believe, and thereon allege, that Codian's website allows users in this District to download software and/or upgrades for the infringing products.

9. This Court has subject matter jurisdiction over the claims in this First Amended Complaint under 28 U.S.C. §§ 1331 and 1338(a).

10. Venue in this District is proper under 28 U.S.C. §§ 1391 and 1400(b).

FIRST CLAIM FOR RELIEF

(Infringement of Patents Assigned to Polycom)

11. Polycom incorporates by reference paragraphs 1 through 10 as if set forth here in full.

12. United States Patent No. 6,697,476 (the "'476 patent"), entitled "Audio conference platform system and method for broadcasting a real-time audio conference over the Internet," was duly and legally issued on February 24, 2004. Polycom is the owner by assignment of all right, title, and interest in and to the '476 patent. A copy of the '476 patent is attached as Exhibit A.

13. United States Patent No. 6,760,749 (the “’749 patent”), entitled “Interactive conference content distribution device and methods of use thereof,” was duly and legally issued on July 6, 2004. Polycom is the owner by assignment of all right, title, and interest in and to the ’749 patent. A copy of the ’749 patent is attached as Exhibit B.

14. United States Patent No. 6,633,985 (the “’985 patent”), entitled “System and method for videoconferencing across networks separated by a firewall,” was duly and legally issued on October 14, 2003. Polycom is the owner by assignment of all right, title, and interest in and to the ’985 patent. A copy of the ’985 patent is attached as Exhibit C.

15. United States Patent No. 6,744,460 (the “’460 patent”), entitled “Video Display Mode Automatic Switching System and Method,” was duly and legally issued on June 1, 2004. Polycom is the owner by assignment of all right, title, and interest in and to the ’460 patent. A copy of the ’460 patent is attached as Exhibit D.

16. Polycom is informed and believes, and thereon alleges, that in violation of 35 U.S.C. § 271, Codian and Codian US have been and are currently directly infringing, contributorily infringing, and/or inducing infringement of, the ’476 patent by, among other things, making, using, offering to sell, selling, and/or importing videoconferencing products without authority or license from Polycom, including but not limited to the MCU 4200 series of multipoint control units.

17. Polycom is informed and believes, and thereon alleges, that in violation of 35 U.S.C. § 271, Codian and Codian US have been and are currently directly infringing, contributorily infringing, and/or inducing infringement of, the ’749 patent by, among other things, making, using, offering to sell, selling, and/or importing videoconferencing products without authority or license from Polycom, including but not limited to the MCU 4200 series of multipoint control units.

18. Polycom is informed and believes, and thereon alleges, that in violation of 35 U.S.C. § 271, Codian and Codian US have been and are currently directly infringing, contributorily infringing, and/or inducing infringement of, the ’985 patent by, among other

things, making, using, offering to sell, selling, and/or importing videoconferencing products without authority or license from Polycom, including but not limited to the MCU 4200 series of multipoint control units.

19. Polycom is informed and believes, and thereon alleges, that in violation of 35 U.S.C. § 271, Codian and Codian US have been and are currently directly infringing, contributorily infringing, and/or inducing infringement of, the '460 patent by, among other things, making, using, offering to sell, selling, and/or importing videoconferencing products without authority or license from Polycom, including but not limited to the MCU 4200 series of multipoint control units.

20. Polycom is informed and believes, and thereon alleges, that defendants' infringement of the '476 patent, the '749 patent, the '985 patent, and the '460 patent has been and continues to be willful.

21. Polycom is informed and believes, and thereon alleges, that unless enjoined, Codian and Codian US will continue to infringe the '476 patent, the '749 patent, the '985 patent, and the '460 patent, and Polycom will suffer irreparable injury as a direct and proximate result of defendants' conduct.

22. Polycom has been damaged by defendants' conduct, and until an injunction issues will continue to be damaged in an amount yet to be determined.

SECOND CLAIM FOR RELIEF

(Infringement of Patents Assigned to Polycom Israel)

23. Polycom Israel incorporates by reference paragraphs 1 through 10 as if set forth here in full.

24. United States Patent No. 6,496,216 (the "'216 patent"), entitled "Method and system for multimedia communication control," was duly and legally issued on December 17, 2002. Polycom Israel is the owner by assignment of all right, title, and interest in and to the '216 patent. A copy of the '216 patent is attached as Exhibit E.

25. United States Patent No. 6,757,005 (the “’005 patent”), entitled “Method and system for multimedia video processing,” was duly and legally issued on June 29, 2004. Polycom Israel is the owner by assignment of all right, title, and interest in and to the ’005 patent. A copy of the ’005 patent is attached as Exhibit F.

26. Polycom Israel is informed and believes, and thereon alleges, that in violation of 35 U.S.C. § 271, Codian and Codian US have been and are currently directly infringing, contributorily infringing, and/or inducing infringement of, the ’216 patent by, among other things, making, using, offering to sell, selling, and/or importing videoconferencing products without authority or license from Polycom Israel, including but not limited to the MCU 4200 series of multipoint control units.

27. Polycom Israel is informed and believes, and thereon alleges, that in violation of 35 U.S.C. § 271, Codian and Codian US have been and are currently directly infringing, contributorily infringing, and/or inducing infringement of, the ’005 patent by, among other things, making, using, offering to sell, selling, and/or importing videoconferencing products without authority or license from Polycom Israel, including but not limited to the MCU 4200 series of multipoint control units.

28. Polycom Israel is informed and believes, and thereon alleges, that defendants’ infringement of the ’216 patent and the ’005 patent has been and continues to be willful.

29. Polycom Israel is informed and believes, and thereon alleges, that unless enjoined, Codian and Codian US will continue to infringe the ’216 patent and the ’005 patent, and Polycom Israel will suffer irreparable injury as a direct and proximate result of defendants’ conduct.

30. Polycom Israel has been damaged by defendants’ conduct, and until an injunction issues will continue to be damaged in an amount yet to be determined.

PRAYER FOR RELIEF

On the First Claim for Relief, Polycom prays for relief as follows:

A. For a determination that defendants infringe the '476 patent, the '749 patent, the '985 patent, and the '460 patent and that defendants' infringement is willful;

B. For an order preliminarily and permanently enjoining defendants, and their directors, officers, employees, attorneys, agents, and all persons in active concert or participation with any of the foregoing from acts of infringement of the '476 patent, the '749 patent, the '985 patent, and the '460 patent;

C. For damages resulting from infringement of the '476 patent, the '749 patent, the '985 patent, and the '460 patent in an amount to be determined at trial, and the trebling of such damages due to the willful nature of their infringement;

D. For an award of interest on damages;

E. For a declaration that this case is exceptional pursuant to 35 U.S.C. § 285 and an award of attorneys' fees and costs; and

F. For an award of such other and further relief as this Court deems just and proper.

On the Second Claim for Relief, Polycom Israel prays for relief as follows:

A. For a determination that defendants infringe the '216 patent and the '005 patent, and that defendants' infringement is willful;

B. For an order preliminarily and permanently enjoining defendants, and their directors, officers, employees, attorneys, agents, and all persons in active concert or participation with any of the foregoing from acts of infringement of the '216 patent and the '005 patent;

C. For damages resulting from infringement of the '216 patent and the '005 patent in an amount to be determined at trial, and the trebling of such damages due to the willful nature of their infringement;

D. For an award of interest on damages;

E. For a declaration that this case is exceptional pursuant to 35 U.S.C. § 285 and an award of attorneys' fees and costs; and

F. For an award of such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Polycom and Polycom Israel hereby demand a trial by jury on any issue triable of right by a jury.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFFS AND COUNTERCLAIM
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POLYCOM, INC. AND POLYCOM ISRAEL, LTD.

Dated: May 1, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served through electronic filing to all counsel of record on this 1st day of May, 2006.

/s/ Morgan Chu

Morgan Chu