

FILED
11/26/02
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

800 ADEPT, INC., a Florida corporation,

Plaintiff,

CASE NO.
6:02-cv-1354-Orl-2DAB

vs.

✓ MUREX SECURITIES, LTD., an Isle of Man
limited company; MUREX LICENSING
CORPORATION, a Delaware corporation;
TARGUS INFORMATION CORPORATION,
a corporation; and WEST CORPORATION,
a corporation.

Defendants.

**FIRST
AMENDED COMPLAINT**

**ACTION FOR INFRINGEMENT OF PLAINTIFF'S
PATENTS; FOR JUDGMENT OF NON-INFRINGEMENT
AND/OR INVALIDITY AS TO DEFENDANTS' PATENTS;
AND FOR UNFAIR COMPETITION.
JURY TRIAL AND INJUNCTIVE RELIEF REQUESTED**

Plaintiff **800 ADEPT, INC.**, ("Plaintiff") for its complaint against
Defendant **MUREX SECURITIES, LTD.** ("Defendant MSL"), Defendant
MUREX LICENSING CORPORATION ("Defendant MLC"), Defendant
TARGUS INFORMATION CORPORATION ("Defendant Targus"), and
Defendant **WEST CORPORATION** ("Defendant West") states:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff is a Florida corporation with its principal place of business at 238 N. Westmonte Dr., Suite 100, Altamonte Springs, Seminole, County, Florida 32714.

2. Upon information and belief, Defendant MSL is an alien limited company organized under the laws of the Isle of Man with its principal place of business at 8 Myrtle Street, Douglas, Isle of Man.

3. Upon information and belief, Defendant MLC is a Delaware corporation with its principal place of business at 8010 Towers Crescent Dr., Fifth Floor, Vienna, Virginia 22182 and is the exclusive licensee of various patents owned by Defendant MSL.

4. Upon further information and belief, Defendants MSL and MLC do business throughout the United States and within the State of Florida by, inter alia, licensing national companies to use a system and method which infringes Plaintiff's Patents; and by contributing to and/or inducing others throughout the United States and within the State of Florida to use and practice a system and method which infringes Plaintiff's Patents.

5. Upon information and belief, Defendant Targus is a foreign corporation having its principal place of business at 8010 Towers Crescent Dr., Fifth Floor, Vienna, Virginia 22182, and is a licensee of Defendant

MSL and/or Defendant MLC to utilize and practice a system and method which infringes Plaintiff's Patents throughout the United States, including within the State of Florida.

6. Upon information and belief, Defendant West is a corporation with a regular and established place of business at Omaha, Nebraska, and is a licensee of Defendant MSL and/or Defendant MLC to utilize and practice a system and method which infringes Plaintiff's patent rights throughout the United States, including within the State of Florida.

7. As set out below, Count One is an action for patent infringement against all Defendants and arises under the patent laws of the United States. This Honorable Court has exclusive jurisdiction over the subject matter of Count One under 28 U.S.C. §§1331 and 1338(a). Venue properly lies before this Court as to Count One under 28 U.S.C. §1391(d) as to Defendant MSL, and under 28 U.S.C. §1391(c) as to the remaining Defendants.

8. Count Two is an action by Plaintiff against Defendant MSL under 35 U.S.C. §291, seeking an adjudication that one or more claims of Defendant MSL's Patents interfere with one or more claims of Plaintiff's Patents, and therefore that Defendant MSL's interfering claims are invalid. This Honorable Court has exclusive jurisdiction over the subject

matter of the parties under 28 U.S.C. §1338(a) for the subject matter of Count Two. Venue properly lies as to Count Two under 28 U.S.C. §1391(d).

9. Counts Three-Six are actions by Plaintiff against Defendant MSL seeking a declaration under 28 U.S.C. §2201 that certain of Defendant MSL's Patents are not infringed by Plaintiff or any of Plaintiff's clients and licensees using the system and method described and claimed in Plaintiff's Patents, and/or that Defendant MSL's Patents are invalid. Venue properly lies in this Court for Counts Three-Six under 28 U.S.C. §1391(d).

10. Count Seven is an action under the common law of Florida by Plaintiff against Defendants MSL and MLC for damages and injunctive relief arising from actions of unfair competition engaged in by Defendants MSL and MLC in tortiously interfering with contractual relations between Plaintiff and certain of its clients and licensees. This Honorable Court has pendant jurisdiction over Count Seven pursuant to 28 U.S.C. §1338(b). Venue as to Count Seven is proper under 28 U.S.C. §1391(c) and (d).

BACKGROUND

11. On July 31, 1992, a patent application was filed in the United States Patent and Trademark Office ("USPTO") covering a system, method and database for automatically routing a telephone call to a desired location based upon the latitude and longitude of the caller and predetermined criteria established by Plaintiff's client. The patent application was assigned to Plaintiff, and was issued as U.S. Patent No. 5,588,048 ("the '048 patent") on December 24, 1996. Subsequently, the patent was reissued as U.S. Patent No. RE 36,111 ("the '111 patent") on February 23, 1999. Additionally, a related divisional patent application culminated in the issuance on September 8, 1998 of U.S. Patent No. 5,805,689 ("the '689 patent"). The '048 patent, the '111 patent and the '689 patent are referred to collectively as "Plaintiff's Patents."

12. Plaintiff has commercialized its telephone routing system, methods and database and has licensed Plaintiff's Patents to clients and licensees which desire to employ a single toll-free telephone number nationwide for ease and convenience of consumers. Under Plaintiff's patented system, consumers merely call the single toll-free number and that call is automatically routed to a particular store or service location

in a territory designed according to predetermined criteria established by Plaintiff's client.

13. Well after Plaintiff filed the patent application on July 31, 1992 that resulted in the issuance of Plaintiff's Patents, James D. Shaffer ("Shaffer") and George G. Moore ("Moore") filed patent application Serial No. 20,653 on February 22, 1993 for a system and method for routing telephone calls.

14. Patent application Serial No. 20,653 issued as U.S. patent 5,506,897 ("the '897 Patent") on April 9, 1996 and was assigned to Defendant MSL.

15. Additionally, Defendant MSL has obtained other patents stemming from Application Serial No. 20,653, including the following:

- (1) U.S. Patent No. 5,848,131, issued December 8, 1998, entitled "Automatic Information and Routing System for Telephonic Services" ("the '131 Patent");
- (2) U.S. Patent No. 5,907,608, issued May 25, 1999, entitled "Automatic routing and information system for telephonic Services" ("the '608 Patent");
- (3) U.S. Patent No. 5,910,982, issued June 8, 1999, entitled "Automatic Routing and Information System for Telephonic Services" ("the '982 Patent");
- (4) U.S. Patent No. 5,956,397, issued September 21, 1999, entitled "Automatic Routing and Information system for Telephonic Services" ("the '397 Patent");

- (5) U.S. Patent No. 5,982,868, issued November 9, 1999, entitled "Automatic Routing and Information system for Telephonic Services" ("the '868 Patent"); and
- (6) U.S. Patent No. 6,091,810, issued July 18, 2000, entitled "Automatic Routing and Information System for Telephonic Services" ("the '810 Patent").

16. Although the above patents employ different semantics such as the term "spatial key," upon information and belief, the systems and methods licensed and practiced by the Defendants actually employ systems and methods covered by the claims of Plaintiff's Patent.

17. Defendants MSL and/or MLC have asserted infringement claims against Plaintiff's clients and licensees under one or more of the patents listed in ¶¶14 and 15 above.

18. Upon information and belief, Defendant MSL has acquired ownership of U.S. Patent No. 4,757,267, issued to Riskin on July 12, 1988 ("the Riskin patent").

19. The Riskin patent employs an algorithm for routing telephone calls using vertical and horizontal ("V-H") coordinates.

20. Upon information and belief, the V-H coordinate technique was originated by AT&T to measure distances between rate centers.

21. The V-H coordinate technique disclosed in the Riskin Patent is not equivalent to the latitude and longitude technique described and claimed in Plaintiff's Patents.

22. The V-H coordinate technique does not account for the curvature of the earth. Moreover, the V-H coordinate technique ultimately determines an area and not a point, as do latitude and longitude, and thus do not accomplish the precision of the system and methods described and claimed in Plaintiff's Patents. Furthermore, the Riskin patent was considered in the prosecution of Plaintiff's Patents.

23. Although Plaintiff's system, method and database does not infringe any of Defendants' Patents, Defendants MSL and/or MLC have continued to threaten Plaintiff and some of its clients and licensees with patent infringement litigation based on their patents, including the Riskin patent, if Plaintiff and its clients and licensees, do not agree to pay an exorbitant fee for a license.

COUNT ONE

Action for Patent Infringement of Plaintiff's Patents (All Defendants)

24. This Count One is an action by Plaintiff against all of the Defendants of infringements of Plaintiff's Patents.

25. Plaintiff restates and incorporates by reference paragraphs 1-23 above, inclusive, into this Count One.

26. Plaintiff is the sole owner of the entire right, title and interest in the '111 and '689 Patents.

27. Defendant MSL has directly infringed and/or contributorily infringed and/or induced others to infringe one or more claims of the '111 and '689 Patents through at least one of the acts of making, using, selling, offering to sell and/or licensing infringing methods, systems and databases in the United States.

28. Defendant MLC has directly infringed, and/or contributorily infringed and/or induced others to infringe one or more claims of the '111 and '689 Patents through at least one of the acts of making, using, selling, offering to sell and/or licensing infringing methods, systems and databases in the United States.

29. Defendant Targus has directly infringed, and/or contributorily infringed and/or induced others to infringe one or more claims of the '111 and '689 Patents through at least one of the acts of making, using, selling, offering to sell and/or licensing infringing methods, systems and databases in the United States.

30. Defendant West has directly infringed, and/or contributorily infringed and/or induced others to infringe one or more claims of the '111 and '689 Patents through at least one of the acts of making, using, selling, offering to sell and/or licensing infringing methods, systems and databases in the United States.

31. Upon information and belief, the infringements by Defendants MSL and MLC have been willful.

32. Plaintiff has suffered a compensable injury and will be irreparably harmed by Defendants' infringing activities unless Defendants are enjoined by this Honorable Court.

COUNT TWO

Invalidity of Interfering Murex Patent Claims (Defendant MSL)

33. This Count Two is an action by Plaintiff against Defendant MLS under the provisions of 35 U.S.C. §291 as to commonly-claimed subject matter in one or more of Plaintiff's Patents and in one or more of the patents of Defendant MLS.

34. Plaintiff here restates and incorporates by reference into this Count Two the allegations of ¶¶1-23 above, inclusive.

35. Upon information and belief, one or more of the patents of Defendant MSL listed in ¶¶14 and 15 above claim the same subject matter as is claimed in one or more of Plaintiff's Patents. Therefore, one or more of the patents of Defendant MSL contain interfering claims within the meaning of 35 U.S.C. ¶291.

36. As to the commonly-claimed subject matter, Plaintiff's Patents enjoy priority of invention and Plaintiff is therefore entitled to a judgment that the interfering claims in one or more of the patents of Defendant MSL is or are invalid.

COUNT THREE

Non-Infringement of Defendant MSL's Patents Derived from Application Serial No. 20,653 (Defendant MSL)

37. This Count Three is an action by Plaintiff seeking a declaratory Judgment pursuant to the provisions of 28 U.S.C. §2201 that Plaintiff has not infringed any of Defendant MSL's Patents derived from Application Serial No. 20,653.

38. Plaintiff here restates and incorporates by reference into this Count Three the allegations of ¶¶1-23 above, inclusive.

39. The patents of Defendant MSL listed in ¶¶14 and 15 above, are all derived from Application Serial No. 20,653.

40. To the extent that any claims of Defendant MSL's Patents which derive from Application Serial No. 20,653 are interpreted so as to be found not to interfere with any claim of Plaintiff's Patents, then the system, method and database utilized by Plaintiff and its clients and licensees do not infringe any claims of those derived patents.

41. The assertions by Defendants MSL and/or MLC that Plaintiff has infringed one or more of the patents derived from Application Serial No. 20,653 creates a real and actual controversy as to whether Plaintiff and its clients and licensees have infringed any claims of those derived patents.

42. Plaintiff is entitled to a declaratory judgment under 28 U.S.C. §2201 that the claims of Defendant MSL's derived patents have not been infringed by the system, method and database utilized by Plaintiff, its clients and licensees.

43. Upon information and belief, Defendant MSL's infringement allegations as to certain of the patents derived from Application Serial No. 20,653 were made in bad faith and without a justifiable basis for

asserting same, thereby entitling Plaintiff to an award of exemplary damages.

COUNT FOUR

Non-Infringement of the Riskin Patent (Defendant MSL)

44. This Count Four is an action by Plaintiff against Defendant MSL for a declaratory judgment under 28 U.S.C. §2201 that Plaintiff or its clients and licensees have not infringed any claim of the Riskin patent.

45. Plaintiff here restates and incorporates by reference into this Count Four the allegations of ¶¶1-23 above, inclusive.

46. The system, method and database utilized by Plaintiff and its clients and licensees does not infringe any valid claim of the Riskin patent. Further, any claim of infringement by Defendant MSL under the Riskin patent is barred by the Doctrines of Laches, Estoppel and/or the applicable statute of limitations.

47. The assertions by Defendant MSL that Plaintiff has infringed the Riskin patent creates a real and actual controversy, and Plaintiff is entitled to a declaratory judgment under 28 U.S.C. §2201 that Plaintiff, its clients and licensees, have no infringement liability under the Riskin patent.

48. Upon information and belief, Defendant MSL's infringement allegations as to the Riskin patent have been made without a good faith belief that any such liability exists, justifying an award to Plaintiff of exemplary damages.

COUNT FIVE

Non-Infringement of Other MSL Patents (Defendant MSL)

49. This Count Five is an action by Plaintiff against Defendant MSL for a declaratory judgment that Plaintiff has not infringed MSL's United States Patent 5,901,214 ("the '214 Patent) or MSL's United States Patent 6,058,179 ("the '179 Patent").

50. Plaintiff here restates and incorporates by reference into this Count Five the allegations of ¶¶1-23 above, inclusive.

51. In addition to those patents of Defendant MSL referred to in Counts Three and Four above, Defendant MSL and Defendant MLC have asserted infringement of the '214 and '179 patents through the use by Plaintiff and its clients and licensees of Plaintiff's system, method and database.

52. The system, method and database used by Plaintiff and its clients and licensees does not infringe any valid claim of either the '214 Patent or the '179 Patent.

53. The assertions by Defendant MSL and Defendant MLC that Plaintiff has infringed either the '214 Patent or the '179 Patent creates a real and actual controversy. Plaintiff is entitled to a declaratory judgment under 28 U.S.C. §2201 that these two patents have not been infringed.

54. Upon information and belief, the infringement allegations of Defendants MSL and MLC as to the '214 and '179 Patents is without a good faith basis, justifying an award to Plaintiff of exemplary damages.

COUNT SIX

Invalidity of MSL Patents **(Defendant MSL)**

55. This Count Six is an action by Plaintiff against Defendant MSL for a declaration that the patents of Defendant MSL referenced in Counts Three, Four and Five are invalid.

56. Plaintiff here restates and incorporates by reference into this Count Six the allegations of ¶¶1-23 above, inclusive.

57. Upon information and belief, certain of the properly construed claims in the patents of Defendant MSL referenced in Counts Three, Four and Five above are invalid under the provisions of 35 U.S.C. §§101, 102, 103 or 112. The assertions by Defendant MSL that Plaintiff has infringed one or more of the MSL Patents creates a real and actual controversy with respect to the issue of validity of Defendant MSL's patents, particularly any claim of a patent which Defendant MSL alleges covers the system, method or database used by Plaintiff and its clients and licensees.

58. Plaintiff is entitled to a declaratory judgment under 28 U.S.C. §2201 that the asserted claims of the patents of Defendants MSL are invalid or unenforceable.

COUNT SEVEN

Unfair Competition by Reason of Tortious Interference With Contractual Relations (Defendants MSL, MLC and Taurus)

59. This Count Seven is an action by Plaintiff against all of the Defendants under the common law of Florida for unfair competition arising from tortious interference by these Defendants of actual and prospective contractual relationships between Plaintiff and third parties.

60. Plaintiff here restates and incorporates by reference into this Count Seven the allegations of ¶¶1-54 above, inclusive.

61. Upon information and belief, one or more of the Defendants acting alone or collectively have contacted and/or threatened clients and licensees of Plaintiff in an effort to interfere with Plaintiff's actual and prospective contractual relationships with such clients and licensees, and otherwise threatened those clients and licensees with lawsuits.

62. Plaintiff has suffered a compensable injury as a proximate result of the conduct of Defendants as outlined in this Count Seven, and is likely to suffer irreparable injury unless Defendants' conduct is not preliminarily and then permanently enjoined.

63. Upon information and belief, the conduct of Defendants as outlined in this Count Seven was engaged in with a willful, wanton or reckless disregard for Plaintiff's advantageous and contractual relationships with its clients and licensees, justifying an award of punitive damages.

JURY TRIAL REQUEST

Plaintiffs request a trial by jury as to all matters triable to a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that this Honorable Court enter such Preliminary and Final Orders and Judgments as are necessary to provide Plaintiff with the following relief:

- a. Under Count One, an award of compensatory damages for the infringement by Defendants of Plaintiff's Patents.
- b. Under Count One, an award of exemplary damages, attorney's fees and costs;
- c. Under Count One, a preliminary and then permanent injunction preventing Defendants, together with their officers, agents and employees, from infringing the claims of Plaintiff's patents.
- d. Under Count Two, a judgment under 35 U.S.C. §291 that Plaintiff's Patents enjoy priority of invention with respect to the same subject matter being claimed in the patents of Defendant MSL.
- e. Under Counts Three, Four and Five, a declaratory judgment pursuant to 28 U.S.C. §2201 that the system, method and database used by Plaintiff and

its clients and licensees does not infringe any claim of the patents of Defendant MSL.

- f. Under Counts Three, Four and Five, an award of compensatory and exemplary damages.
- g. Under Count Six, a declaratory judgment under 28 U.S.C. §2201 that one or more of Defendant MSL's patents are invalid pursuant to the provisions of 35 U.S.C. §101, 102, 103 and/or 112.
- h. Under Count Seven, an award of compensatory and punitive damages.
- i. Under Counts Two-Seven, costs and attorneys' fees to which Plaintiff would be entitled.
- j. Such other relief as the Court deems appropriate.

Respectfully submitted,



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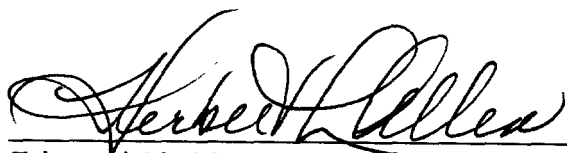
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Date: Nov 26, 2002


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of First Amended Complaint was provided by Federal Express on this 26th day of November, 2002, to: Michael M. Barry, Chief Patent Counsel, Murex Licensing Corporation, 8010 Towers Crescent Drive, Vienna, Virginia 22182.

Karlene Pile