

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

Civil Action No. 6:07-cv-00796-GAP-DAB

HARRIS CORPORATION

Plaintiffs,

v.

REMBRANDT TECHNOLOGIES, LP,

Defendants.

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL INJUNCTIVE
RELIEF AND DAMAGES REQUESTED**

Plaintiff Harris Corporation ("Harris"), through its undersigned attorneys, alleges the following as and for its First Amended Complaint against Defendant Rembrandt Technologies, LP ("Rembrandt").

Nature and Basis of Action

This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, the United States Patent Laws, 35 U.S.C. § 1 et. seq., and the laws of Florida. Harris requests relief from this Court, including damages and injunctive relief as a result of Rembrandt's refusal to license its patents relating to the Advanced Television Systems Committee ("ATSC") digital television broadcasting standard on fair, reasonable, and nondiscriminatory ("FRAND") terms. Harris further requests declarations that: (i) Harris is entitled to the license on FRAND terms as requested in Exhibit "A" to this Complaint, which is incorporated herein by reference; (ii) that Rembrandt's refusal to provide FRAND licenses, despite its obligation to do so, is a breach of contract; (iii) that Harris is a third-party

beneficiary that has been damaged by Rembrandt's failure to comply with its contractual obligations and is entitled to enforce those obligations and to recover damages due to said breach of contract, (iv) that Hams' customers have a right to use the technology licensed pursuant to the FRAND terms by virtue of their relationship with Harris; and/or (v) that the claims of various patents allegedly owned by Rembrandt are unenforceable because Rembrandt has failed to license the technology on FRAND terms. Harris seeks this relief without addressing the validity or infringement of patents relating to the ATSC digital television broadcasting standard.

Parties

1. Harris Corporation is a company organized and existing under the laws of Delaware, having its principal place of business at 1025 West NASA Boulevard, Melbourne, Florida 32919. Harris designs, develops and markets a variety of communications products and services throughout the World.

2. This case involves products installed and used by Harris's customers in Florida. Such products are used in digital television broadcasting worldwide, including throughout the United States and Florida, to implement and practice the ATSC standard for digital television broadcasting.

3. On information and belief, Rembrandt Technology, LP is a limited partnership organized and existing under the laws of New Jersey, with a principal place of business in Bala Cynwyd, Pennsylvania.

4. On information and belief, Rembrandt is a patent holding company that does not manufacture or sell any products.

5. On information and belief, the business purposes of Rembrandt are to

acquire patents and to pursue and secure revenue from licensing of those patents. Consistent with this purpose, in or around December of 2004, Rembrandt purchased all of Paradyne Corporation's rights to U.S. Patent No. 5,243,627 (the "'627 Patent"). AT&T Corporation ("AT&T") was the original assignee of the '627 Patent. Paradyne's rights and obligations in the '627 Patent derive from AT&T and can be no broader than the rights and obligations that AT&T held in the patent. Similarly, Rembrandt's rights and obligations can be no broader than the rights that were originally assigned to AT&T.

6. Nevertheless, despite its obligation to license Harris on FRAND terms that will allow Harris's customers to use Harris products in their intended manner, Rembrandt refuses to grant Harris a license and unreasonably seeks to enforce the '627 Patent downstream against Harris' customers that use Harris products to practice the ASTC standard. Some of those customers have tendered requests to Harris for indemnification.

Jurisdiction and Venue

7. This Court has original jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331, 1332 and 1338, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 based on federal question jurisdiction, because there is complete diversity between the parties to the state law claims and because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and because Harris claims involve the United States Patent Laws, 35 U.S.C. § 1, *et. seq.*, an act of Congress relating to patents.

8. Because this Court has original jurisdiction as alleged above, it has supplemental jurisdiction over the state law claims asserted in this action under 28 U.S.C. §§ 1332 and 1367. The federal and state law claims asserted in this action arise from a common nucleus of operative facts.

9. Rembrandt has engaged in acts or omission that subject it to the *in personam* jurisdiction of this Court, as reflected by the following:

A. Upon information and belief, in 2004 and 2005, Rembrandt, through its employees and agents, traveled to Florida to perform due diligence, negotiate, purchase, and execute contracts relating to the '627 patent with Paradyne Corporation ("Paradyne"), a foreign corporation authorized at that time to do business in Florida. Paradyne's principal place of business was located at 8545 – 126th Avenue North, Largo, Florida 33773. On or about December 10, 2004, Rembrandt and Paradyne conducted their negotiations and reached an agreement in Florida wherein Rembrandt purchased the '627 Patent from Paradyne. Upon information and belief, the negotiations for the '627 Patent between Rembrandt and Paradyne took place in Florida and involved Patrick M. Murphy, Paradyne's chief financial officer who resides in Tampa, Florida. The Rembrandt-Paradyne agreement resulted in an assignment executed by Mr. Murphy in Pinellas County, Florida on December 10, 2004. That assignment, which was notarized in Florida by a Florida notary, is the foundation of the contractual obligations alleged below. Because that assignment is silent as to choice of law and forum, any lawsuit resulting therefrom would be subject to the laws of this State and to the jurisdiction of the federal and state courts in the State of Florida, including this Court.

B. Rembrandt has contracted with at least two consulting firms in the State of Florida to assist it in reviewing its patent portfolio, which includes the '627 patent. Rembrandt has also consulted with patent owners in Florida. Rembrandt traveled to Florida at least three times from 2004-2006 to consult with these owners and firms, which, according to Rembrandt, is essential to "building, strengthening,

articulating, and focusing” on claims associated with its patent portfolio. Rembrandt considers the agreements with the Florida consulting firms to be essential to its business. Upon information and belief, the agreements established ongoing relationships between Rembrandt and its consultants and were entered in Florida and are subject to the laws of this State. Any disputes arising therefrom are subject to the jurisdiction of the federal and states courts in the State of Florida, including this Court.

C. The Rembrandt business model is to acquire patents and pursue license revenues from those patents through negotiation and litigation. Every patent currently litigated by Rembrandt in federal court was developed by inventors located in Florida. To implement its business model, Rembrandt, through its employees and agents, has solicited business in Florida from Florida patent holders and Florida patent assignees during 2004, 2005, and 2006.

D. Rembrandt is advertising its business in Florida and actively soliciting business from Florida citizens and from citizens of other states through an interactive web page on the internet. Once a Florida citizen contacts Rembrandt through its web page, or otherwise, Rembrandt issues a non-disclosure agreement to the Florida citizen for his or her review and acceptance. Upon information and belief, said non-disclosure agreements are reviewed and accepted by Florida citizens in the State of Florida.

E. Rembrandt acquired the ‘627 Patent from Paradyne in the State of Florida and did so subject to all the rights, duties, and obligations that Paradyne had with, and to, third parties regarding the ‘627 Patent, including the contractual obligations alleged below. The inventors of the ‘627 Patent are William L. Betts of St.

Petersburg, Florida, and Edward S. Zuranski of Largo, Florida. The '627 Patent was filed with the U.S. Patent and Trademark Office ("USPTO") on August 22, 1991. The inventors assigned the '627 Patent to AT&T Bell Laboratories ("AT&T Bell") of Murray Hill, New Jersey. Said assignment appears in the USPTO's records. Upon information and belief, the '627 Patent was eventually assigned to AT&T IPM Corp. ("AT&T IPM") (believed to be a wholly owned subsidiary of AT&T). AT&T IPM has its principal place of business at 2333 Ponce de Leon Boulevard, Coral Gables, Dade County, Florida 33134. On or about January 12, 1995, and in order to participate in the development of a standard for high definition television ("HDTV"), AT&T IPM entered into the agreement alleged below with the Advanced Television Systems Committee ("ATSC") to license the '627 Patent on FRAND terms. This agreement to license the '627 Patent on FRAND terms was negotiated in Florida and was signed by James E. Lamar as President of AT&T IPM in Dade County, Florida.

F. The '627 Patent and all the appurtenant rights and obligations, including the Florida agreement by AT&T IPM of January 12, 1995, were assumed by Paradyne, who in turn assigned all its rights, duties and obligations *vis-à-vis* the '627 Patent to Rembrandt in Florida.

G. Rembrandt's website states that it collaborates closely with those whose patents it acquires. Therefore, on information and belief, Rembrandt has continuing contacts and communications with Florida-based patent owners and inventors, including Paradyne (or its successors) concerning the '627 Patent and claims associated with that patent.

H. Rembrandt's website also states that it shares awards and settlements

with those whose patents it acquires. Therefore, on information and belief, Rembrandt is also acting as the agent of Florida-based Paradyne (or its successors) for purposes of pursuing licenses or awards and settlements in multiple lawsuits Rembrandt has filed claiming infringement of the '627 Patent.

I For over six years, and in reliance upon the AT&T IPM Florida agreement of January 12, 1995, Harris has sold and used digital television products and services in the State of Florida and elsewhere that may implement and practice the ATSC standards which were the object of the aforementioned AT&T IPM Florida agreement.

J Harris is a third party beneficiary of the AT&T IPM Florida agreement of January 12, 1995.

K On April 12, 2007, Harris, as a company with its principle place of business in Florida, demanded that Rembrandt, as the assignee of the '627 Patent, grant it a license as agreed to by AT&T IPM in the Florida licensing agreement of January 12, 1995. To this day, Rembrandt has not agreed to grant said license in Florida.

L By refusing to grant Harris a FRAND license for the '627 Patent in Florida, has breached the AT&T IPM Florida licensing agreement of January 12, 1995.

M Harris customers have installed and are using products in Florida which Rembrandt alleges infringe the '627 Patent. Rembrandt is seeking patent royalties from companies operating in Florida based on revenues generated in Florida.

N By engaging in the acts described above, Rembrandt is operating, conducting, engaging in or carrying on a business or business venture in the State of Florida. Rembrandt is subject to *in personam* jurisdiction under Fla. Stat. §

48.193(1)(a).

O. By engaging in the acts described above and by refusing to grant the required FRAND license as described above, Rembrandt has caused injury to Harris, a citizen of the State of Florida with its principal place of business in Melbourne, Florida, or to Harris's property as detailed above, while at or about the same time Rembrandt was engaging in solicitation activities within the State of Florida. Rembrandt is subject to *in personam* jurisdiction under Fla. Stat. § 48.193(1)(f)1.

P. By engaging in the acts or omissions described above, Rembrandt has breached the AT&T IPM Florida agreement of January 12, 1995 described above and assumed by Rembrandt, by failing to perform required licensing acts to be performed in Florida, to wit: the granting of a FRAND license to Harris in Florida. Rembrandt is subject to *in personam* jurisdiction under Fla. Stat. § 48.193(1)(g).

Q. By engaging in the acts described above, Rembrandt has engaged in substantial and not isolated activity within the State of Florida. Rembrandt is subject to *in personam* jurisdiction under Fla. Stat. § 48.193(2).

R. As described above, Rembrandt has sufficient contacts with the State of Florida to satisfy the due process clause of the Fourteenth Amendment such that maintenance of this lawsuit in Florida does not offend traditional notions of fair play and substantial justice. *See International Shoe Co. v. Washington*, 326 U.S. 310, 315-17 (1945); *Cable/Home Communication Corp. v. Network Productions, Inc.*, 902 F.2d 829, 855 (11th Cir. 1990); *Venetian Salami Co. v. Parthenais*, 554 So.2d 499, 502 (Fla. 1989); *see also Madara v. Hall*, 916 F.2d 1510, 1516 (11th Cir. 1990).

10. Venue is proper in this District under 28 U.S.C. § 1391.

Facts Giving Rise to this Action

The Digital Television Industry

11. This case is about Rembrandt's anticompetitive and illegal conduct in the digital television industry.

12. The digital television industry is heavily regulated by technical standards that are developed and maintained by Standards Development Organizations ("SDOs"). In fact, the ATSC standard has been adopted by the Federal Communications Commission ("FCC"). Pursuant to FCC mandates, all TV stations in the United States are required to deploy digital TV.

13. On or around September 16, 1995, the ATSC published its "ATSC A-53 Digital Television Standard." Presently, the ATSC standard is the established standard for digital television broadcasting throughout the United States. Rembrandt has asserted in litigation filed by it that all digital television receivers that are compliant with the ATSC digital television standard necessarily infringe the '627 Patent. *See*, July, 2006 Preliminary Infringement Contentions, filed by Rembrandt in its litigation against Comcast, Case No. 2:05-CV-443 in the Eastern District of Texas.

The Role of Standards Development Organizations in the Digital Television Industry

14. An understanding of the role that SDOs play in the evolution of digital television and the rules by which SDOs must operate and regulate industry participants like Harris and Rembrandt is important to resolving this case. SDOs evaluate technology and are supposed to generate (usually by a vote of the SDO membership) a public standard representing the best technological solution that can be used to promote compatibility and enhance competition.

15. Without certain rules, however, SDOs would be illegal trusts because they constitute forums in which competitors essentially negotiate to determine which products will be made and how they will be manufactured. The payoff for owners of patents that are incorporated into the standard is substantial because the entire industry will need a license to the patents essential to the standard in order to make products designed to operate according to the standard. To prevent patent owners from imposing monopolistic royalties and to mitigate the threat of a single patent owner extorting unreasonably high royalties from an entire industry, SDOs condition the standardization of proprietary technology upon the patent owner's commitment to make the technology available to the public royalty-free or on FRAND terms. Securing a promise from an intellectual property owner that it will provide royalty-free or FRAND license terms permits the SDOs to set industry standards despite antitrust laws because industry standards as a whole can have pro-competitive benefits, that include lowering barriers to market entry and making more products available at lower prices.

16. Unfortunately, for the same reason — avoiding antitrust scrutiny — SDOs have traditionally refrained from setting any commercial license terms or attempting to articulate what terms would satisfy the FRAND standard, leaving the door open for monopolistic opportunists, like Rembrandt, to attempt to extract unreasonable license terms and conditions.

17. Recently, in April of 2007, the Department of Justice ("DOJ") and the Fair Trade Commission ("FTC") jointly issued a report titled "Antitrust Enforcement and Intellectual Property Rights: Promoting Innovation and Competition." That report acknowledges the problem that patentees can unreasonably "hold up" the industry after the

standard has been adopted. *See, e.g.*, Chapter 2 of the report at pp. 37 - 40, attached as Exhibit "B". In the report, the DOJ and the FTC recognize the public policy that companies such as Rembrandt should not be permitted, after a standard has been adopted, to improperly hold up the industry by refusing to license patents on fair and reasonable terms. This public policy is particularly applicable here because the '627 Patent stems from the work of AT&T, which participated in promulgating the ATSC digital television standard.

AT&T Corporation Committed to License the '627 Patent on FRAND

Terms

18. The application that led to the '627 Patent was filed by William Betts and Edward Zuranski, both of Florida, in August of 1991. At that time, they each assigned their rights in the patent application to AT&T Bell. The assignment agreement was recorded with the USPTO.

19. The '627 Patent issued on September 7, 1993. Sometime thereafter, AT&T Bell, as a member of the ATSC standards committee, participated in developing the ATSC digital television broadcasting standard. AT&T Bell agreed to the ATSC Patent Policy, which requires it to license any patents it had that were essential to the ATSC standard on FRAND terms. A copy of that letter is attached to this Complaint at Exhibit "C," which is incorporated herein by reference. This agreement was a condition of AT&T Bell's participation in the development of the ATSC standard. See, Exhibit "D," ATSC Patent Policy, which is incorporated herein by reference.

20. On January 12, 1995, AT&T IPM Corp wrote to the ATSC and agreed that it would license its patents that relate to the ATSC standard for HDTV to the extent that the claims of such patents are directed toward and essential to the implementation of the

standard. On information and belief, AT&T IPM Corp., at the time it made its commitment to license, was an affiliate of AT&T. Therefore, this explicit written commitment (which is still publicly available on the ATSC web site) is further evidence that AT&T Corporation intended the FRAND requirements of the ATSC standards body to apply to any AT&T patents that are essential to practicing the ATSC standard.

21. Pursuant to the ATSC Patent Policy, if the '627 Patent were essential technology that AT&T would not agree to license on reasonable terms, AT&T was obligated to specifically identify the '627 Patent to the ATSC before the standard specification was voted on so that the standards body could take appropriate steps before adopting the specification. Having failed to so identify the '627 Patent, AT&T is deemed under the ATSC Patent Policy to have committed to license the '627 Patent to all comers on FRAND terms and is not entitled to refuse to license that patent.

Rembrandt Seeks Licenses on Unreasonable Terms

22. On information and belief, Rembrandt purchased the 627 Patent sometime in 2004.

23. On or around December 9, 2004, Rembrandt recorded an agreement at the USPTO. Pursuant to that agreement a company called Paradyne purportedly assigned its rights in the 627 Patent to Rembrandt.

24. On information and belief, since obtaining the patent in 2004, Rembrandt has not offered to license the patent to any manufacturers on FRAND terms. Instead, Rembrandt improperly seeks to enforce its patents downstream against the equipment users, and/or by suing and threatening to sue cable operators and network broadcast providers.

25. On or around February 15, 2007, Rembrandt wrote to at least Fox

Entertainment Group, Inc., NBC Universal Inc, CBS Corporation, and ABC Inc. In its letters, Rembrandt stated that the '627 Patent is "directed toward and essential to the implementation of the Standard." Rembrandt proposed to license the '627 Patent for "a license fee of one-half percent (0.5%) of all revenues derived from use of the ATSC standard by your company as a broadcaster licensee."

26. Each of Fox, CBS, NBC and ABC has requested indemnification from Harris.

Rembrandt Has Refused to License to Harris on FRAND Terms

27. For more than six years, Harris has been designing, manufacturing and selling digital television products that implement and practice the ATSC standards. Harris continues to do so today. During this period, no owner of the '627 Patent made any attempt to notify Harris of the '627 Patent or to enforce that patent against Harris.

28. In particular, despite Harris' lengthy and open participation in the ATSC market, Rembrandt has never provided notice of the '627 Patent to Harris, and has never directly offered to license the patent to Harris on FRAND terms. Instead, Rembrandt has only recently sued Harris' customers and is unreasonably trying to obtain royalties based on those customers' revenue streams.

29. Harris made substantial investments in the research, design, development, manufacture and marketing of its transmitters (communications equipment). These investments were made in reliance on promises that licenses to any patents essential to the ATSC technology would be available to Harris on FRAND terms.

30. Therefore, on or around April 12, 2007, Harris wrote to Rembrandt and while denying that Harris infringes the '627 patent, or that the '627 patent is valid, Harris

proposed to take a license on FRAND terms. A copy of the Harris letter is attached to this Complaint at Exhibit "A". As of the date of filing of this First Amended Complaint, Rembrandt has failed to comply with its obligations to Harris based on its fundamental commitment to the digital television SDOs. Instead, Rembrandt improperly seeks license fees based on Harris' customers' revenue streams.

31. Rembrandt's refusal to license the '627 Patent to Harris on FRAND terms is the very conduct that the ATSC standards policy is intended to prevent. Unless the FRAND commitment is enforced, the entire purpose of the standard policy would be undermined and rendered meaningless.

32. Moreover, in light of the numerous lawsuits filed by Rembrandt against practitioners of the ATSC standard, and the fact that Rembrandt has not offered Harris a FRAND license, Harris is suffering harm to its relationship with its customers in the marketplace. Moreover, Harris has a reasonable apprehension of imminently being sued for infringement of Rembrandt's '627 Patent.

33. Harris has suffered and is suffering ongoing harm due to Rembrandt's refusal to license on FRAND terms. Harris committed to the ATSC standard with the understanding that it would have freedom to operate and sell its products in reliance on all parties' compliance with the terms of the standard. Rembrandt's misdirected pursuit of patent revenues and its threats against numerous Harris customers threatens to harm Harris' business. Therefore, Harris requests relief from this Court based on the following causes of action.

**FIRST CAUSE OF ACTION
BREACH OF CONTRACT, DEMAND FOR
SPECIFIC PERFORMANCE**

34. Harris incorporates and re-alleges all of the averments contained in paragraphs 1 through 33 as if set forth fully herein.

35. As set forth above, the ATSC is an SDO responsible for, among other things, the development and establishment of digital television broadcasting standards.

36. At the time that the ATSC digital television standard was established, the '627 Patent was owned by AT&T, which was a member of the ATSC. As a member of the ATSC, AT&T entered into an actual or implied contract to comply with ATSC's governing documents, including, but not limited to, the ATSC Patent Policy. But for this commitment, AT&T would not have been permitted to participate in setting an ATSC digital television standard.

37. Under the terms of the ATSC Patent Policy, prior to approval of the standard, the ATSC shall receive from patent holders, "either: assurance in the form of a general disclaimer to the effect that the patentee does not hold and does not anticipate holding any invention whose use would be required for compliance with the proposed ATSC Standard or assurance that: (a) A license will be made available without compensation to applicants desiring to utilize the license for the purpose of implementing the standard, or (b) A license will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination." See ¶ 2 of the ATSC Patent Policy.

38. AT&T, as a member of the ATSC and through its participation in developing the ATSC standard and/or through its affiliate, AT&T IPM, made a binding and irrevocable promise that AT&T would negotiate licenses in good faith and would be prepared to grant FRAND terms to all potential licensees.

39. Rembrandt took title to the '627 Patent subject to AT&T's FRAND commitment, and is therefore required to license it in good faith and to grant FRAND terms to Harris.

40. Rembrandt has breached its obligations by refusing to offer a license in good faith and by failing to license on FRAND terms.

41. As a result of Rembrandt's breaches, Harris has been irreparably injured in its business or property through the loss of past, present, and future profits, by the loss of customers and potential customers, by the loss of goodwill and product image, and by the prospective damage to its ATSC digital television business and continuing threat of patent infringement litigation.

42. As a result of Harris' injuries, Harris further seeks specific performance of Rembrandt's contractual obligations to offer licenses in good faith and to provide FRAND terms.

**SECOND CAUSE OF ACTION
BREACH OF CONTRACT, DEMAND FOR
DAMAGES**

43. Harris incorporates and re-alleges all of the averments contained in paragraphs 1 through 33 and 35 through 40 as if set forth fully herein.

44. Alternatively, as a result of Harris' injuries, Harris seeks damages in an amount to be proven at trial.

**THIRD CAUSE OF ACTION BREACH OF CONTRACT,
DEMAND FOR SPECIFIC PERFORMANCE (WITH HARRIS AS AN INTENDED
THIRD-PARTY BENEFICIARY)**

45. Harris incorporates and re-alleges all of the averments contained in paragraphs 1 through 33 and 35 through 37 as if set forth fully herein.

46. Alternatively, AT&T, as a member of ATSC, entered into an actual or

implied contract with ATSC to comply with ATSC's governing documents, including, but not limited to, ATSC's Patent Policy.

47. AT&T's contract with ATSC created contractual rights in third parties, including Harris as a potential licensee of AT&T's intellectual property. AT&T limited its right to enforce the '627 Patent first by joining ATSC, again when it agreed to comply with the ATSC Patent Policy, and yet a third time when its affiliate, AT&T IPM wrote to the ATSC and explicitly committed to license any patents essential to the ATSC standards on FRAND terms. As a result, Harris is an intended third-party beneficiary of AT&T's contract with ATSC. Harris can enforce AT&T promise to grant FRAND licenses against AT&T's successor, Rembrandt.

48. AT&T, as a member of the ATSC, and through its participation in developing the ATSC standard and/or through its affiliate, AT&T IPM made a binding and irrevocable promise that AT&T would offer licenses in good faith and would be prepared to grant FRAND terms to all potential licensees. This promise was a condition of AT&T's participation in ATSC's development of a standard that allegedly now requires AT&T patented technology to implement

49. AT&T and ATSC's intent to benefit third parties is clearly manifested in the ATSC Patent Policy. Under the terms of the ATSC Patent Policy, prior to approval of the standard, members must commit that licenses "will be made available upon request under reasonable and non-discriminatory terms and conditions to all applicants for the purpose of implementing the Specification Document."

50. Rembrandt took title to the '627 Patent subject to AT&T's FRAND obligations, and is therefore required to license in good faith and to grant FRAND terms to

Harris for the benefit of Harris and ultimately its customers.

51. As a result of Rembrandt's breaches, Harris has been irreparably injured in its business or property through the loss of past, present, and future profits, by the loss of customers and potential customers, by the loss of goodwill and product image, and by the prospective damage to its digital television broadcasting business and continuing threat of patent infringement litigation.

52. As a result of Harris' injuries, Harris further seeks specific performance of Rembrandt's contractual obligations to offer licenses in good faith and to provide FRAND terms.

**FOURTH CAUSE OF ACTION
BREACH OF CONTRACT, DEMAND FOR DAMAGES (WITH HARRIS
AS AN INTENDED THIRD-PARTY BENEFICIARY)**

53. Harris incorporates and re-alleges all of the averments contained in paragraphs 1 through 33, 35 through 37, and 46 through 50 as if set forth fully herein.

54. Alternatively, as a result of Harris' injuries, Harris seeks damages in an amount to be proven at trial.

**FIFTH CAUSE OF ACTION
DECLARATORY JUDGMENT OF
UNENFORCEABILITY**

55. Harris incorporates and re-alleges all of the averments contained in paragraphs 1 through 33 as if set forth fully herein.

56. Upon information and belief, AT&T committed to the ATSC digital television SDOs that it would license, on FRAND terms, any patents and patent applications that are essential to practice the ATSC digital television broadcasting standard. This was an irrevocable commitment.

57. Rembrandt, which purchased the '627 Patent from Paradyne as a successor to AT&T now refuses to provide a license to its allegedly essential '627 Patent on FRAND terms.

58. Harris respectfully requests that this Court declare that the '627 Patent is unenforceable and that Rembrandt is estopped from, has waived, and is otherwise barred from enforcement of the '627 Patent against Harris and Harris's customers on the grounds that Rembrandt has declared the '627 Patent to be essential to practicing the ATSC digital television broadcasting standard but is refusing to honor the binding fundamental commitments made to the SDOs and to potential licensees, like Harris. In the alternative, the Court should declare that Harris is entitled to a license to the '627 Patent on FRAND terms for the benefit of Harris and Harris' customers.

**SIXTH CAUSE OF ACTION
DECLARATORY JUDGMENT
PURSUANT TO CHAPTER 86, FLORIDA STATUTES**

59. This is an action brought pursuant to Chapter 86, Florida Statutes for declaratory relief.

60. Harris incorporates and re-alleges all of the averments contained in paragraphs 1 through 33 and 35 through 40 as if set forth fully herein.

61. Based on the foregoing, Harris is in doubt about its rights to license the '627 Patent on FRAND terms consistent with Exhibit "A" and seeks a declaration of its rights, status, or other equitable or legal relations thereto pursuant to Chapter 86, Florida Statutes.

**SEVENTH CAUSE OF ACTION
PROMISSORY ESTOPPEL, DEMAND FOR DAMAGES**

62. Harris incorporates and re-alleges all of the averments contained in paragraphs 1 through 33, and 35 through and 39 as if fully set forth herein.

63. When Rembrandt acquired the '627 Patent as successor to AT&T, it represented to

anyone interested in licensing the '627 Patent, including Harris, that it would provide "assurance that: (a) A license will be made available without compensation to applicants desiring to utilize the license for the purpose of implementing the standard, or (b) A license will be made available to applicants under reasonable terms and conditions that are demonstrably free of any unfair discrimination."

64. Those representations were material to Harris and contrary to Rembrandt's refusal to license the '627 Patent to Harris on FRAND terms.

65. At the time those representations were made, AT&T, and subsequently Rembrandt, knew or reasonably should have expected that third parties would take action in reliance on the promise as set forth above.

66. Harris made substantial investments in the research, design, development, manufacture and marketing of its transmitters (communications equipment) in reasonable reliance on Rembrandt's representations.

67. Those substantial investments in reliance on Rembrandt's representations would be detrimental to Harris unless Rembrandt licenses the '627 Patent to Harris on FRAND terms.

68. Harris has suffered damages as a result of its reasonable reliance on Rembrandt's representations.

Jury Demand

69. Harris hereby respectfully requests a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Harris respectfully requests that the Court enter judgment:

1. that Harris is entitled to a license to the '627 Patent on FRAND terms as requested in Exhibit A to this Complaint;
2. that Rembrandt's refusal to provide FRAND licenses, despite

its obligation to do so, is a breach of contract;

3. that Harris is a third-party beneficiary that has been damaged by Rembrandt's failure to comply with its contractual obligations and is entitled to enforce that obligation and to recover damages for such breach;

4. that Harris' customers have a right to use the inventions claimed in the 627 Patent by virtue of their relationship with Harris;

5. that the claims of the '627 Patent, which is allegedly owned by Rembrandt, are unenforceable due to Rembrandt's refusal to license on FRAND terms;

6. that Harris is entitled to damages based on the theory of promissory estoppel.

7. that Harris is entitled to its costs and expenses of litigation, including expert witness fees; and/or

8. that Harris is entitled to such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 31, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all CM/ECF participants.

Respectfully Submitted,

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