United States District Court

SOUTHERN DISTRICT OF NEW YORK

ICOS VISIONS SYSTEMS CORP. N.V. and
ICOS VISION SYSTEMS, INC.

V.

SCANNER TECHNOLOGIES CORP.,
ELWIN M. BEATY and ELAINE BEATY

SUMMONS IN A CIVIL CASE

CASE NUMBER:

05 CV 6322

TO: (Name and address of defendant)

SCANNER TECHNOLOGIES CORP.
14505 21ST AVENUE NORTH
MINNEAPOLIS, MN 55447

ELWIN M. BEATY and ELAINE BEATY
13529 ARTHUR STREET
MINNETONKA, MN 55305

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

Emilio A. Galvan, Esq.
Brian L. Michaelis, Esq. (to be admitted pro hac vice)
Brown Rudnick Berlack Israels LLP
Seven Times Square
New York, New York 10036

an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON
CLERK

JUL 11 2005
DATE

(BY) DEPUTY CLERK

AO 440 (Rev. 10/93) Summons In a Civil Action -SDNY WEB 4/99

RETURN OF SERVICE

Service of the Summons and Complaint was made by me[1]	DATE
NAME OF SERVER *(PRINT)*	TITLE

Check one box below to indicate appropriate method of service

☐ Served personally upon the defendant. Place where served: _____

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.
Name of person with whom the summons and complaint were left: _____

☐ Returned unexecuted: _____

☐ Other *(specify)*: _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____
Date

_____
Signature of Server

_____
Address of Server

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

05 CV 6322

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ICOS VISIONS SYSTEMS CORPORATION N.V., and ICOS VISION SYSTEMS, INC.,

Plaintiffs,

v.

SCANNER TECHNOLOGIES CORPORATION, ELWIN M. BEATY, and ELAINE BEATY

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs ICOS Visions Systems Corporation N.V. and ICOS VISION SYSTEMS, INC. ("ICOS"), by and through its undersigned counsel, files this complaint against Defendant Scanner Technologies Corporation, Elwin Beaty and Elaine Beaty ("Scanner"), averring as follows:

Nature of the Action

1. This is an action for declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202. This action arises under the patent laws of the United States, in particular, 35 U.S.C. §§ 102, 103, 112 and 271.

The Parties

2. Plaintiff ICOS Visions Systems Corporation N.V. is a corporation duly organized and existing under the laws of Belgium with a place of business at Esparantolaan 8, 3001 Heverlee, Belgium, and plaintiff ICOS Vision Vision Systems, Inc. is a corporation organized

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ICOS VISIONS SYSTEMS CORPORATION N.V., and ICOS VISION SYSTEMS, INC.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. _____
SCANNER TECHNOLOGIES CORPORATION, ELWIN M. BEATY, and ELAINE BEATY	)	
Defendants.	)	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs ICOS Visions Systems Corporation N.V. and ICOS VISION SYSTEMS, INC. ("ICOS"), by and through its undersigned counsel, files this complaint against Defendant Scanner Technologies Corporation, Elwin Beaty and Elaine Beaty ("Scanner"), averring as follows:

Nature of the Action

1. This is an action for declaratory judgment pursuant to 28 U.S.C. §§2201 and 2202. This action arises under the patent laws of the United States, in particular, 35 U.S.C. §§ 102, 103, 112 and 271.

The Parties

2. Plaintiff ICOS Visions Systems Corporation N.V. is a corporation duly organized and existing under the laws of Belgium with a place of business at Esparantolaan 8, 3001 Heverlee, Belgium, and plaintiff ICOS Vision Vision Systems, Inc. is a corporation organized

and existing under the laws of the State of Delaware with a principal place of business at Three Lagoon Drive, Suite 160, Redwood City, CA 94065.

3. Upon information and belief, defendant Scanner Technologies Corporation ("Scanner") is a corporation organized and existing under the laws of the State of Minnesota with a principal place of business at 14505 21st Avenue North, Minneapolis, MN 55447.

4. Upon information and belief, Scanner is the exclusive licensee, from Elwin Beaty and Elaine Beaty the assignees of record, of U.S. Patent No. 6,862,365 B1 ("the `365 patent") entitled "Method and Apparatus for Three Dimensional Inspection of Electronic Components," issued March 1, 2005, a copy of which is annexed hereto as Exhibit 1.

5. Upon information and belief, Scanner is the exclusive licensee, from Elwin Beaty and Elaine Beaty the assignees of record, of U.S. Patent No. 6,915,006 ("the `006 patent") entitled "Method and Apparatus for Three Dimensional Inspection of Electronic Components," issued July 5, 2005, a copy of which is annexed hereto as Exhibit 2.

6. Upon information and belief, Scanner is the exclusive licensee, from Elwin Beaty and Elaine Beaty the assignees of record, of U.S. Patent No. 6,915,007 ("the `007 patent") entitled "Method and Apparatus for Three Dimensional Inspection of Electronic Components," issued July, 5, 2005, a copy of which is annexed hereto as Exhibit 3.

Jurisdiction and Venue

7. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §1338(a).

8. Venue is proper in this district court pursuant to 28 U.S.C. §§1391(b) and (c).

The ICOS 1-Cam System

9. ICOS, a Belgian corporation, has designed and developed automated systems for inspection of electronic components. ICOS has developed a system for inspection of electronic components using one camera ("ICOS 1-Cam system").

10. ICOS intends to import and sell the ICOS 1-Cam system in the United States. ICOS has begun demonstrating and taking orders in the United States for sales of ICOS 1-Cam system products. ICOS expects to begin importing the 1-Cam system products into the United States before December 2005.

ICOS's Reasonable Apprehension That It Will Be Sued

11. Upon information and belief, defendant Scanner asserts that the ICOS 1-Cam system and other ICOS systems infringe the `365 patent, the `006 patent and the `007 patent.

12. In a related litigation, *Scanner v. ICOS Vision Systems* 00 CIV. 4992, Scanner President and Chief Executive Officer Elwin Beaty testified at deposition that he advised ICOS that "Scanner Technologies would take whatever actions are allowed under the law to protect our intellectual property." Scanner Vice President David Mork further testified at trial in that related action that Mr. Beaty communicated to ICOS "in no uncertain terms we will vigorously defend our intellectual property." In that related action Scanner brought suit against ICOS with no advance warning and with no written notice of the Scanner patents involved in that action.

13. Upon information and belief, Scanner told affiliates of an ICOS customer that the ICOS systems infringe Scanner patents and that Scanner would be filing an infringement suit against ICOS and might sue end users as well. Specific patents were mentioned, including the

`365 patent.

14. On July 7, 2005 Scanner posted a "news" item on its website announcing the issuance of the `006 and `007 patents. The `006 and `007 patents are related to the same subject matter as the `365 patent.

15. Scanner has placed ICOS in reasonable apprehension that it will be sued for alleged infringement of the `365, `006 and `007 patents when ICOS sells 1-Cam system products in the United States. Scanner's actions and statements as described in paragraphs 11-14 above evidences a clear intention on the part of Scanner to enforce the `365, `006 and `007 patents against ICOS.

16. Therefore, there exists a substantial and continuing controversy between ICOS and Scanner as to the infringement and validity of the `365, `006 and `007 patents.

Count 1
Declaratory Judgment of No Infringement of the `365 Patent

17. ICOS repeats and realleges the allegations of paragraphs 1-16 as if set forth herein.

18. The ICOS 1-Cam system products do not infringe or contribute to the infringement of the `365 patent.

19. ICOS will not induce others to infringe the `365 patent because the use of ICOS's product according to the accompanying instructions will not fall within the scope of any claim of the `365 patent, and therefore does not infringe any such claim.

Count 2
Declaratory Judgment of No Infringement of the `006 Patent

20. ICOS repeats and realleges the allegations of paragraphs 1-19 as if set forth

herein.

21. The ICOS 1-Cam system products do not infringe or contribute to the infringement of the `006 patent.

22. ICOS will not induce others to infringe the `006 patent because the use of ICOS's product according to the accompanying instructions will not fall within the scope of any claim of the `006 patent, and therefore does not infringe any such claim.

Count 3
Declaratory Judgment of No Infringement of the `007 Patent

23. ICOS repeats and realleges the allegations of paragraphs 1-22 as if set forth herein.

24. The ICOS 1-Cam system products do not infringe or contribute to the infringement of the `007 patent.

25. ICOS will not induce others to infringe the `007 patent because the use of ICOS's product according to the accompanying instructions will not fall within the scope of any claim of the `007 patent, and therefore does not infringe any such claim.

Count 4
Declaratory Judgment of Patent Invalidity of the `365 Patent

26. ICOS repeats and realleges the allegations of paragraphs 1-25 as if set forth herein.

27. Claims of the `365 patent are invalid under one or more of 35 U.S.C. §§101, 102, 103 and/or 112.

Count 5
Declaratory Judgment of Patent Invalidity of the `006 Patent

28. ICOS repeats and realleges the allegations of paragraphs 1-27 as if set forth herein.

29. Claims of the `006 patent are invalid under one or more of 35 U.S.C. §§101, 102,103 and/or 112.

Count 6
Declaratory Judgment of Patent Invalidity of the `007 Patent

30. ICOS repeats and realleges the allegations of paragraphs 1-29 as if set forth herein.

31. Claims of the `007 patent are invalid under one or more of 35 U.S.C. §§101, 102,103 and/or 112.

WHEREFORE ICOS respectfully requests that this Court enter the following relief:

a) A declaratory judgment that ICOS is not liable for infringement of the `365 patent;

b) A declaratory judgment that ICOS is not liable for infringement of the `006 patent;

c) A declaratory judgment that ICOS is not liable for infringement of the `007 patent;

d) A declaratory judgment that claims of the `365 patent are invalid;

e) A declaratory judgment that claims of the `006 patent are invalid;

f) A declaratory judgment that claims of the `007 patent are invalid;

g) A declaration that this case is exceptional under 35 U.S.C. §285;

h) A judgment in favor of ICOS for its attorneys' fees, costs and expenses in this action; and

i) A judgment in favor of ICOS for such further, necessary and proper relief as this Court may deem just and proper.

ICOS VISIONS SYSTEMS, N.V.
By its attorneys,

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