

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

THE MEN'S WEARHOUSE, INC.

Plaintiff,

v.

U.S. ETHERNET INNOVATIONS, LLC,

Defendant.

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C.A. NO. _____

JURY TRIAL DEMANDED

COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, THE MEN'S WEARHOUSE, INC. ("TMW"), for its Complaint against Defendant, U.S. ETHERNET INNOVATIONS, LLC ("USEI), alleges as follows:

PARTIES

1. TMW is a corporation organized and existing under the laws of the State of Texas, having a principal place of business at 6380 Rogerdale, Houston, Texas 77072-1624, and doing business in this State and District.

2. Upon information and belief, USEI is a limited liability company organized and existing under the laws of the State of Texas, having a principal place of business at 719 West Front Street, Suite 122, Tyler, Texas 75702.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction on the following grounds:

- (a) 28 U.S.C. § 1331, this being a civil action arising under the laws of the United States;
- (b) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce and protecting trade and commerce; and
- (c) 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to alleged patent rights.

4. This Court may declare the rights and other legal relations of the parties in this case under FED. R. CIV. P. 57 and 28 U.S.C. § 2201, *et seq.*, because an actual and justiciable controversy exists concerning the rights of, and legal relations between, TMW and USEI.

5. This Court has personal jurisdiction over USEI consistent with the principles underlying the U.S. Constitution and Texas law. USEI is doing business and has done business in this State and District, and USEI is allegedly a Texas resident with its principal place of business located in Tyler, Texas.

6. Venue is proper in this Court under the provisions of 28 U.S.C. § 1391. A substantial part of the events giving rise to TMW's claims occurred in this District, and upon information and belief, USEI is subject to personal jurisdiction in this District.

BACKGROUND FACTS

7. USEI purports to be the owner of a portfolio of U.S. patents, including U.S. Patents No. 5,299,313; 5,307,459; 5,319,752; 5,412,782; 5,434,872; 5,485,584; 5,530,874; 5,732,094; 5,872,920; and 6,112,252 (the "Patents"), allegedly relating to certain "ethernet technology." USEI has asserted that "[t]he ethernet technology [covered by the Patents] is utilized in many day-to-day business activities within corporations, including internet connections, data transmissions, retail transactions, corporate transactions, networked security system cameras, point of sale information, and inventory management systems."

8. USEI has alleged that TMW has acted unlawfully by using technology products subject to the Patents, and USEI has threatened to enforce alleged patent rights against TMW.

9. Upon information and belief, USEI has sought to enforce its alleged patent rights against multiple parties both by demand and by litigation, including pursuant to two (2) lawsuits, one currently pending in the Eastern District of Texas (09-cv-448) and another pending in the Northern District of California (10-cv-03724), against multiple defendants for alleged infringement of certain of the Patents. Moreover, USEI is a defendant in a declaratory judgment action filed in the Northern District of California filed by Zions Bancorporation (10-cv-03481) in which Zions is seeking a declaratory judgment of noninfringement of certain of the Patents.

10. On or about September 10, 2010, USEI sent a letter to TMW alleging ownership of the Patents. Referring to the California lawsuit (which was originally filed in the Eastern District of Texas) USEI stated that it “recently filed a patent infringement lawsuit against nine major corporations believed to be infringing the patents.” Referring to the Texas lawsuit, USEI stated that it “filed a patent infringement lawsuit in March 2010 against six more companies believed to be infringing the patents”, and that in May 2010 USEI added eight other retail companies such as Macy’s as defendants in that case. USEI also stated in this letter that it had “retained Robbins Geller Rudman & Dowd LLP, the largest and most successful plaintiff’s law firm in the world, to assist in [its] enforcement efforts.” However, “to avoid additional protracted litigation with a select group of companies utilizing the technology,” USEI was offering TMW “a license to the patents outside of litigation.” USEI noted that it already had demanded and received license payments from “a number of major corporations.” The letter enclosed a license agreement that would require TMW to pay USEI a significant cash fee

payment for a license to the Patents, or slightly less if paid promptly “to avoid costly and time-consuming litigation.” Attached hereto as Exhibit A is a true and correct copy of that letter.

11. USEI subsequently engaged in several telephone conversations with TMW, threatening on numerous occasions that suit could be filed unless TMW agreed to their outrageous demands. As a result of the actions described above, TMW fears that USEI will honor its threats and file suit.

12. Based upon current information and belief, TMW does not infringe one or more valid claims of the Patents.

13. Based upon current information and belief, TMW has not violated any of USEI’s purported rights and is not liable to USEI, in law or in equity.

CLAIM FOR RELIEF

14. TMW incorporates by reference paragraphs 1-13 as if set forth fully herein.

15. There is an actual and substantial controversy between TMW and USEI of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court. USEI has made a threat to TMW’s business by accusing TMW of unlawful actions and requesting that TMW immediately pay a massive license fee.

16. These allegations place a cloud over TMW’s business and, in particular, TMW’s rights and abilities to continue business activities relating to the products accused of violating USEI’s alleged patent rights, and thus will cause uncertainty among customers, prospective customers and suppliers, and elsewhere in the marketplace, likely leading TMW to lose revenue and/or business opportunities.

17. Pursuant to FED. R. CIV. P. 57 and 28 U.S.C. § 2201, *et seq.*, declaratory judgment is proper in this instance to determine the respective rights and legal relations between TMW and

USEI. TMW is entitled to a judgment declaring that its conduct has been lawful and declaring that it has not otherwise violated any purported rights of USEI.

WHEREFORE, Plaintiff, THE MEN'S WEARHOUSE, INC., requests the entry of a judgment:

- A. Declaring that TMW has not infringed or otherwise violated any purported rights of USEI, including any provisions of 35 U.S.C. § 101, *et seq.*, or any other federal, state, or common law or equitable claim;
- B. Granting TMW its costs, reasonable attorneys' fees, and other litigation expenses, together with such further relief as the Court may deem just and proper.

THE MEN'S WEARHOUSE, INC. demands a trial by jury on all issues so triable.

Respectfully submitted,

By: 

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