IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Excentus Corporation, Plaintiff, v. CodePro Innovations, LLC, Defendant.	§ § § § § § § § § § §	Civil Action No. 3:12-cv-1988

ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Excentus Corporation ("Excentus"), for its Original Complaint for Declaratory Judgment against Defendant CodePro Innovations, LLC ("CodePro"), alleges as follows:

PARTIES

1. Excentus is a corporation duly organized and existing under the laws of the State of Texas, having a principal of business at 14241 Dallas Parkway, Suite 1200, Dallas, Texas 75254.

2. Upon information and belief, CodePro is a limited liability company organized and existing under the laws of Texas, having a principal place of business at 8416 Old McGregor Road, Waco, Texas 76712. CodePro has an agent for service of process: Jay Mac Rust, 166 S. Belknap Street, Suite 1, Stephenville, Texas 76401-4202.

JURISDICTION

3. This Court has original subject matter jurisdiction over this declaratory judgment action that arises under the patent laws of the United States pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202. A substantial controversy of sufficient immediacy and reality exists between the parties that warrants the issuance of a declaratory judgment.

4. This Court has personal jurisdiction over CodePro because CodePro does business in Texas, is continuously and systematically present in the Texas, has established minimum contacts with Texas such that the exercise of jurisdiction over CodePro would not offend traditional notions of fair play and substantial justice, and has consented to personal jurisdiction by appointing a registered agent in Texas.

VENUE

5. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (b)-(d) because CodePro resides in this District and a substantial part of the events or omissions giving rise to the declaratory judgment claims occurred in this District.

FACTS

6. CodePro is the purported assignee of U.S. Patent Nos. 5,924,078 ("the '078 Patent") and 5,717,866 ("the '866 Patent") (collectively, "DJ Patents").

7. On June 2, 2011, CodePro commenced a patent infringement suit in this Court accusing multiple defendants (e.g., Blockbuster, Kohl's, Redbox, JCPenney) of infringing the DJ Patents. *See CodePro Innovations, LLC v. Blockbuster Inc. et al.*, Case No. 3:11-CV-1171-P (N.D. Tex. 2011) ("the Blockbuster Case").

8. On May 21, 2012, CodePro sent Excentus a letter in which CodePro accuses Excentus of directly infringing the DJ Patents, inducing others (e.g., Shell Oil Company, Winn-Dixie Stores, Bi-Lo Stores, Save Mart Supermarkets) to infringe the DJ Patents, and contributing to others' (e.g., Shell Oil Company, Winn-Dixie Stores, Bi-Lo Stores, Save Mart Supermarkets) infringement of the DJ Patents. Ex. 1, May 21, 2012 Infringement Letter from CodePro to Excentus.

9. Also on May 21, 2012, CodePro sent Excentus customer Winn-Dixie Stores Inc. ("Winn-Dixie") a substantially identical letter in which CodePro accuses Winn-Dixie of directly infringing the DJ Patents, of inducing others (e.g., Shell Oil Company, Excentus) to infringe the DJ Patents, and contributing to others' (e.g., Shell Oil Company, Excentus) infringement of the DJ Patents. Ex. 2, May 21, 2012 Infringement Letter from CodePro to Winn-Dixie.

10. The infringement allegations in the CodePro letters are directed to "retail point-of-sale systems to provide discounts on retail gasoline point-of-sale transactions in response to grocery store loyalty card account information" and specifically accuse Excentus' Fuel Rewards Network and fuelperks! programs of infringing the DJ Patents. Ex. 1, May 21, 2012 Infringement Letter from CodePro to Excentus; Ex. 2, May 21, 2012 Infringement Letter from CodePro to Winn-Dixie.

11. CodePro's infringement allegations may implicate possible indemnification obligations in contracts between Excentus and various customers. For example, after having received the CodePro infringement letter, Excentus customer Winn-Dixie contacted Excentus to inquire about potential contractual indemnification provisions.

12. Based on CodePro's undisputed willingness to pursue patent infringement litigation (e.g., the Blockbuster Case) against entities it claims are infringing the DJ Patents, Excentus has a reasonable apprehension that CodePro may sue Excentus or its customers for infringement of the DJ Patents.

COUNT I – DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 5,924,078

13. To the extent not inconsistent, Excentus incorporates by reference paragraphs 1-12 as if fully set forth herein.

14. Excentus has not directly infringed and does not directly infringe, either literally or under the doctrine of equivalents, any claim of the '078 Patent.

15. Excentus has not indirectly infringed and does not indirectly infringe any claim of the '078 Patent, either by inducing others to infringe the '078 Patent or contributing to others' infringement of the '078 Patent.

16. To the extent that CodePro's infringement allegations (direct, inducement, contributory) against any Excentus customer, including but not limited to Shell Oil Company, Winn-Dixie, Bi-Lo Stores, or Save Mart Supermarkets, result solely from the use of any Excentus fuel discount loyalty program, including but not limited to the Fuel Rewards Network or fuelperks! programs, Excentus customers have not infringed and do not infringe the '078 Patent.

17. Based on the totality of the circumstances of the facts alleged herein, there is a substantial controversy, between parties having adverse legal interests (i.e., Excentus and CodePro), of sufficient immediacy and reality to warrant the issuance of a declaratory judgment of non-infringement of the '078 Patent with respect to all Excentus products, services, and programs.

COUNT II – DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF U.S. PATENT NO. 5,717,866

18. To the extent not inconsistent, Excentus incorporates by reference paragraphs 1-17 as if fully set forth herein.

19. Excentus has not directly infringed and does not directly infringe, either literally or under the doctrine of equivalents, any claim of the '866 Patent.

20. Excentus has not indirectly infringed and does not indirectly infringe any claim of the '866 Patent, either by inducing others to infringe the '866 Patent or contributing to others' infringement of the '866 Patent.

21. To the extent that CodePro's infringement allegations (direct, inducement, contributory) against any Excentus customer, including but not limited to Shell Oil Company, Winn-Dixie, Bi-Lo Stores, or Save Mart Supermarkets, result solely from the use of any Excentus fuel discount loyalty program, including but not limited to the Fuel Rewards Network or fuelperks! programs, Excentus customers have not infringed and do not infringe the '866 Patent.

22. Based on the totality of the circumstances of the facts alleged herein, there is a substantial controversy, between parties having adverse legal interests (i.e., Excentus and CodePro), of sufficient immediacy and reality to warrant the issuance of a declaratory judgment of non-infringement of the '866 Patent with respect to all Excentus products, services, and programs.

COUNT III – AWARD OF ATTORNEY FEES UNDER 35 U.S.C. § 285

23. To the extent not inconsistent, Excentus incorporates by reference paragraphs 1-22 as if fully set forth herein.

24. CodePro's claims that Excentus' products, services, and/or programs, including but not limited to the Fuel Rewards Network or fuelperks! programs, infringe the DJ Patents are manifestly unreasonable and are based on a clear misconstruction of the scopes of the DJ Patents.

25. Therefore, this case is exceptional pursuant to 35 U.S.C. § 285, and Excentus is entitled to an award of reasonable attorney fees.

PRAYER

WHEREFORE, Excentus respectfully prays that upon final trial a judgment be entered and that the following relief be granted:

(1) For declaratory judgment that Excentus does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any claim of the '078 Patent;

(2) For declaratory judgment that Excentus does not infringe, directly or indirectly, literally or under the doctrine of equivalents, any claim of the '866 Patent;

(3) For declaratory judgment that no Excentus program, including but not limited to the Fuel Rewards Network and fuelperks! programs, infringes, directly or indirectly, literally or under the doctrine of equivalents, any claim of the '078 Patent;

(4) For declaratory judgment that no Excentus program, including but not limited to the Fuel Rewards Network and fuelperks! programs, infringes, directly or indirectly, literally or under the doctrine of equivalents, any claim of the '866 Patent;

(5) For an award of attorney fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law against CodePro;

(6) For preliminary and permanent injunctions enjoining CodePro, its officers, agents, servants, employees, subsidiaries, attorneys, and those persons acting in cooperation with CodePro from contacting any Excentus customer and alleging that any Excentus program, including but not limited to the Fuel Rewards Network or the fuelperks! programs, infringes either the '078 Patent or the '866 Patent;

(7) For all costs of suit, prejudgment and post-judgment interest as allowed by law; and

(8) For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Plaintiff Excentus Corporation demands a trial by jury.

Dated: June 22, 2012

Respectfully submitted,

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