

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

SBFI-NORTH AMERICA, INC.,

Plaintiff,

v.

MASS ENGINEERED DESIGN, INC.; and  
JERRY MOSCOVITCH

Defendants.

Case No. 1:12-cv-197

**JURY TRIAL  
DEMANDED**

Plaintiff SBFI-North America, Inc. (“Plaintiff”) hereby pleads the following claims for Declaratory Judgment against Defendants Mass Engineered Design, Inc. (“Mass”) and Jerry Moscovitch (“Moscovitch”) (collectively “Defendants”) and alleges as follows.

**PARTIES**

1. Plaintiff is a corporation organized under the laws of the State of North Carolina and has a principal place of business at 123 Lyman Street, Asheville, North Carolina.

2. Upon information and belief, Mass is a Canadian corporation with a principal place of business at 474 Wellington Street West, Toronto, ON M5V 1E3, Canada, and may be served with process at that address.

3. Upon information and belief, Moscovitch is a resident of the province of Ontario, Canada, is the President of Mass, and may be served at Mass's address.

### **JURISDICTION AND VENUE**

4. This is an action for declaratory judgment of patent non-infringement and invalidity arising under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, with a specific remedy sought under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy exists between Plaintiff and Defendants that requires a declaration of rights by this Court.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391, 1391(c)(3) and 1400 because a substantial part of the events giving rise to the claims presented in this Complaint occurred in this district and because Defendants are not residents of the United States.

### **GENERAL ALLEGATIONS**

7. On November 12, 2009, Defendants sued Plaintiff, along with 28 other defendants ("Texas Defendants"), in the United States District Court for

the Eastern District of Texas (“Texas Case”), for infringement of U.S. Patent No. RE 36,978 (“the ‘978 Patent”), entitled “Dual Display System.” A true and correct copy of the Original Complaint in that action is attached hereto as Exhibit A. Defendants’ Original Complaint against Plaintiff was based on Plaintiff’s alleged “manufacture, use, sale, importation and/or offer for sale of its multi-display units such as its Axiom Adjustable Monitor Arm when configured for use with multiple monitors and other products, and by its contributing to and inducement of others to manufacture, use, sell, import and/or offer for sale of infringing products.”

8. On January 25, 2010, Defendants filed an Amended Complaint in the Texas Case, a true and correct copy of which is attached hereto as Exhibit B. Defendants again alleged that Plaintiff infringes the ‘978 Patent by its “manufacture, use, sale, importation and/or offer for sale of its multi-display units such as its Axiom Adjustable Monitor Arm . . . and by its contributing to and inducement of others to manufacture, use, sell, import and/or offer for sale of infringing products.”

9. On August 2, 2012, after consenting to the Texas Defendants’ Motion to Sever in the Texas Case, Defendants filed a Stipulation of Dismissal without prejudice, so that Complaints could be re-filed with respect

to each Texas Defendant individually. A true and correct copy of the Stipulation is attached hereto as Exhibit C.

10. The '978 Patent was issued by the United States Patent and Trademark Office ("USPTO") on December 5, 2000. A true and correct copy of the '978 Patent is attached hereto as Exhibit D.

11. Defendant Moscovitch is the listed inventor of the subject matter claimed in the '978 Patent.

12. On information and belief, Defendant Mass was established by Defendant Moscovitch to pursue patent infringement claims against alleged infringers of patents owned by or disclosing inventions invented by Moscovitch.

13. Defendants' filing of the Texas Complaint establishes that a substantial controversy exists between the parties having adverse legal interests of sufficient immediacy and reality to warrant issuance of a declaratory judgment under 28 U.S.C. § 2201(a) as to the alleged infringement of Plaintiff's products.

## **FIRST CLAIM FOR RELIEF**

**(Declaratory Judgment of Non-Infringement of U.S. Patent No. RE**

**36,978)**

14. Plaintiff incorporates by reference the allegations in paragraphs 1-13 as though fully set forth herein.

15. This is an action for declaratory judgment of non-infringement of any valid and enforceable claim(s) of the '978 Patent.

16. Defendants have alleged that products manufactured, used, sold, imported, and/or offered for sale by Plaintiff are covered by the '978 Patent, and commenced litigation against Plaintiff regarding this matter.

17. Plaintiff contends that it has not and does not infringe, contribute to, or induce the infringement of any valid and enforceable claim of the '978 Patent.

18. Therefore, a substantial controversy exists between Plaintiff and Defendants, parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment Plaintiff has not infringed and does not infringe any valid and enforceable claim of the '978 Patent.

19. An actual and justiciable controversy exists between Plaintiff and Defendants as to whether Plaintiff's products infringe the '978 Patent. Plaintiff accordingly requests a judicial determination of its rights, duties, and obligations with regard to the '978 Patent.

20. A judicial declaration is necessary and appropriate so that Plaintiff may ascertain its rights regarding the '978 Patent.

## **SECOND CLAIM FOR RELIEF**

### **(Declaratory Judgment of Invalidity of the '978 Patent)**

21. Plaintiff incorporates by reference the allegations of paragraphs 1-20 as though fully set forth herein.

22. This is an action for declaratory judgment of invalidity of any and all claims of the '978 Patent.

23. Defendants have alleged that products manufactured, used, sold, imported, and/or offered for sale by Plaintiff are covered by the '978 Patent, and commenced litigation against Plaintiff regarding this matter.

24. One or more claims of the '978 Patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 *et seq.*, including but not limited to 35 U.S.C. §§ 101, 102, 103, and 112.

25. Therefore, a substantial controversy exists between Plaintiff and Defendants, parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that each asserted claim of the '978 Patent is invalid.

26. An actual and justiciable controversy exists between Plaintiff and Defendants as to the validity of the '978 Patent. Plaintiff accordingly requests a judicial determination of its rights, duties, and obligations with regard to the '978 Patent.

27. A judicial declaration is necessary and appropriate so that Plaintiff may ascertain its rights regarding the '978 Patent.

### **JURY DEMAND**

Plaintiff hereby demands a jury trial on all issues triable of right by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court enter judgment as follows:

1. A declaration that Plaintiff does not infringe any valid and enforceable claim of the '978 patent;
2. A declaration that the '978 Patent is invalid

3. A declaration that this case is “exceptional” pursuant to 35 U.S.C. § 285 and awarding Plaintiff its reasonable costs, expenses, and attorneys’ fees in this action; and

4. Such other and further relief as this Court deems just, reasonable, and proper.

Dated: August 2, 2012

s/ David M. Carter

DAVID M. CARTER

Bar Number: 8605

*Attorney for Plaintiff*

Carter & Schnedler, P.A.

56 Central Ave., #101 (28801)

P. O. Box 2985

Asheville, NC 28802

Phone: (828) 252-6225

Fax: (828) 252-6316

E-mail: [carter@ashevillepatent.com](mailto:carter@ashevillepatent.com)