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Microsoft Corporation*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MICROSOFT CORPORATION,

Plaintiff,

v.

**LBS INNOVATIONS LLC, A NEW
JERSEY LLC, AND
LBS INNOVATIONS, LLC, A TEXAS
LLC**

Defendants.

Civil Action No. 2:12-cv-00848-CCC-
JAD

AMENDED COMPLAINT FOR DECLARATORY RELIEF

NATURE OF THE ACTION

1. On February 10, 2012, Microsoft Corporation (“Microsoft”) filed its original Complaint seeking a declaratory judgment that its web-based mapping services do not infringe U.S. Patent No. 6,091,956 (the “’956 patent”) and that the ’956 patent is invalid. Microsoft filed its Complaint because Defendant LBS Innovations LLC (“LBS New Jersey”) has sued more than fifty entities, claiming that several of these entities infringe the ’956 patent by using Microsoft’s web-based mapping services to show their store or dealer locations. LBS New Jersey’s suits place a cloud of uncertainty over Microsoft’s web-based mapping services and have caused Microsoft’s customers to seek indemnity from Microsoft, thereby creating a substantial, continuing, and justiciable controversy between Microsoft and LBS New Jersey.

2. In the days following the filing of Microsoft’s original Complaint, LBS New Jersey contrived a gambit intended to deprive the Court of jurisdiction over Microsoft’s Complaint. Just days after Microsoft filed its Complaint, LBS New Jersey’s managing agents created a new LBS entity – LBS Innovations, LLC (“LBS Texas”) (LBS New Jersey and LBS Texas are collectively referred to as “LBS”). As the name suggests, LBS Texas is just LBS New Jersey with a different mailing address. After LBS Texas was formed, LBS New Jersey purportedly

assigned its interest in the '956 patent to LBS Texas. Thus, Microsoft amends its Complaint to name LBS Texas as a co-defendant in this action.

PARTIES

3. Microsoft is a Washington corporation, with its principal place of business located at One Microsoft Way, Redmond, Washington 98052.

4. Upon information and belief, LBS New Jersey is a New Jersey limited liability company with its principal place of business at 53 Ramapo Mountain Drive, Wanaque, New Jersey 07465.

5. Upon information and belief, LBS Texas is a Texas limited liability company with its principal place of business at 815 Brazos Street, Suite 500, Austin, Texas 78701.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 2201, 1331, and 1338(a).

7. Venue is proper in this district under 28 U.S.C. § 1391(b) because LBS New Jersey is a New Jersey limited liability company with its principal place of business in this district, and because a substantial part of the events giving rise to the requested claims for relief occurred in this district.

BACKGROUND

A. Mitry creates LBS New Jersey to litigate the '956 patent.

8. The '956 patent issued to Dennis Hollenberg on July 18, 2000.

Hollenberg is listed as the '956 patent's sole inventor.

9. The '956 patent is entitled *Situation Information System* and purports to be directed to "a wireless system for providing services and time-critical information about places and events to mobile computers." The '956 patent's key teaching is that the system supposedly provides mobile users with up-to-date information about events that are occurring or are about to occur. A true and correct copy of the '956 patent is attached as Exhibit "A."

10. On October 20, 2010, Daniel Mitry formed LBS New Jersey.

Microsoft is informed and believes and thereon alleges that Mitry appointed his father as LBS New Jersey's agent for service of process, and listed his father's home address in New Jersey as LBS New Jersey's principal place of business.

11. Microsoft is informed and believes and thereon alleges that less than a month later, on November 10, 2010, Hollenberg assigned to LBS New Jersey all right, title, and interest to the '956 patent, including the right to sue for and recover all past, present, and future damages for infringement.

12. Microsoft is informed and believes and thereon alleges that LBS New Jersey's sole business is to monetize the '956 patent through litigation. Microsoft is

informed and believes and thereon alleges that LBS New Jersey neither makes nor sells any products. Instead, LBS New Jersey is a non-practicing entity, making its money by litigating the '956 patent. That is, LBS New Jersey's business model, such as it is, is built around litigating the '956 patent; it has no other business.

B. Microsoft files its original Complaint.

13. Microsoft provides web-based mapping services to its customers through Bing Maps and previously through the MapPoint Web Service (collectively "Bing Maps"). Customers use Bing Maps to create customized maps to display on their websites. For instance, many Microsoft customers use Bing Maps's store-locator functionality to display on their websites their retail store locations, branches, or other places of business.

14. Beginning in March 2011, LBS New Jersey sued more than fifty entities — including many Microsoft customers who use Bing Maps's store-locator functionality — for purportedly infringing the '956 patent. LBS filed these cases in the United States District Court for the Eastern District of Texas even though LBS New Jersey is a New Jersey LLC operating out of a home in New Jersey. LBS New Jersey's cases are currently pending in Marshall, Texas as case numbers: 2:11-cv-00142; 2:11-cv-00407; 2:11-cv-00408; and 2:11-cv-409 (the "Texas Actions").

15. In the Texas Actions, LBS New Jersey claims that the defendants infringe the '956 patent by including store-locator functionality on their websites. For instance, LBS New Jersey asserts in the Texas Actions that the defendants infringe the '956 patent by “making and/or using in the United States [a] computer implemented website . . . which has a store, dealer, or station location interface.”

16. Many of the Texas defendants use Microsoft's Bing Maps's store-locator functionality. As a consequence, many defendants in the Texas Actions have demanded that Microsoft indemnify and defend them in the Texas Actions.

17. There is an actual, substantial, continuing, and justiciable controversy between Microsoft and LBS New Jersey regarding whether customers using Bing Maps to provide store-locator functionality infringe the '956 patent and whether the '956 patent is valid. Thus, on February 10, 2012, Microsoft filed its Complaint seeking declaratory relief from LBS New Jersey.

C. LBS New Jersey attempts to avoid the Court's jurisdiction.

18. For nearly two years from October 2010 to February 2012, LBS New Jersey held itself out as a New Jersey LLC, enjoying the benefits of doing business as a New Jersey LLC. Between March 2011 and February 15, 2012, LBS New Jersey litigated against more than fifty entities as a New Jersey LLC. LBS New Jersey specifically alleged in its Texas Actions that LBS New Jersey was a New Jersey LLC.

19. That all changed four days after Microsoft filed this suit. On February 14, 2012, Mitry began laying the ground work to try to avoid this Court's jurisdiction. So, he formed LBS Texas, naming himself and Timothy Salmon as LBS Texas's sole managing members. A true and correct copy of the Certificate of Formation is attached as Exhibit "B." A true and correct copy of the Certificate of Filing and Accompanying Letter is attached as Exhibit "C." Microsoft is informed and believes and thereon alleges that neither Mitry nor Salmon are residents of Texas; Mitry lives in New York; Salmon lives in Pennsylvania. Microsoft is informed and believes and thereon alleges that Mitry and Salmon are LBS Texas's sole managing members, just as they were LBS New Jersey's sole managing members.

20. One day after forming LBS Texas, Mitry caused LBS New Jersey to purportedly assign its interest in the '956 patent to LBS Texas. A true and correct copy of the purported Assignment is attached as Exhibit "D." On the same day, Salmon filed with the New Jersey Department of the Treasury, Division of Revenue, a Certificate of Cancellation for LBS New Jersey. Salmon gave as the reason for canceling LBS New Jersey that all LBS New Jersey business activities had been terminated. A true and correct copy of the Certificate of Cancellation is attached as Exhibit "E."

21. Microsoft is informed and believes and thereon alleges that Mitry formed LBS Texas as LBS New Jersey's successor-in-interest for the sole purpose of fraudulently avoiding this Court's jurisdiction generally, and more specifically, to avoid this suit. Microsoft is further informed and believes and thereon alleges that LBS Texas is the mere alter ego of LBS New Jersey. Microsoft is further informed and believes and thereon alleges that LBS Texas and LBS New Jersey have a unity of ownership and interest so that it is equitable and proper to treat them as a single entity for purposes of this action.

22. Microsoft is informed and believes and thereon alleges that LBS New Jersey's assignment of the '956 patent to LBS Texas was a sham patent assignment executed solely to frustrate the Court's jurisdiction, to insulate LBS New Jersey from this Court's jurisdiction, and to avoid this suit.

23. Microsoft is informed and believes and thereon alleges that Salmon's attempted cancellation of LBS New Jersey and attempted termination of its business activities following Microsoft's filing of its Complaint for declaratory relief was undertaken to fraudulently avoid the jurisdiction of this Court, to insulate LBS New Jersey from the Court's jurisdiction, and to avoid this suit.

24. Microsoft is informed and believes and thereon alleges that LBS Texas, like LBS New Jersey, neither makes nor sells any products. Instead, LBS Texas, like its predecessor-in-interest, LBS New Jersey, is a non-practicing entity,

making its money by litigating the '956 patent. Microsoft is further informed and believes and thereon alleges that LBS Texas has requested the parties in the Texas Actions to permit LBS Texas to be substituted into the Texas Actions on LBS New Jersey's behalf.

FIRST CLAIM FOR RELIEF

(Against all defendants)

Declaration of Noninfringement

25. Microsoft incorporates paragraphs 1 through 24, above.

26. There is an actual, substantial, continuing, and justiciable controversy between Microsoft and LBS. Specifically, LBS contends that Microsoft's Bing Maps store-locator functionality infringes the '956 patent. Microsoft denies this contention.

27. No claim of the '956 patent can be validly construed to be infringed by Bing Maps, including the Bing Maps store-locator functionality accused in the Texas Actions. Bing Maps, and its store-locator functionality, does not infringe, has not infringed, and cannot infringe directly, by inducement, or contributorily, any claim in the '956 patent.

28. Accordingly, Microsoft is entitled to a declaratory judgment that Bing Maps, and its store-locator functionality, does not infringe any claim of the '956 patent.

SECOND CLAIM FOR RELIEF

(Against all defendants)

Declaration of Invalidity

29. Microsoft incorporates paragraphs 1 through 28, above.

30. The '956 patent is invalid for failure to comply with the requirements of Title 35 of the United States Code, including without limitation, one or more of §§ 101, 102, 103, and 112.

31. The '956 patent is invalid because, among other things, there is prior art, not considered by the U.S. Patent and Trademark Office in issuing the patent, that anticipates or renders obvious the claims of the '956 patent.

32. LBS asserts the '956 patent is valid and disputes the invalidity of the '956 patent. A substantial, continuing, and justiciable controversy, therefore, exists between Microsoft and LBS regarding the invalidity of the '956 patent.

33. Microsoft seeks, and is entitled to, a declaratory judgment that all claims in the '956 patent are invalid.

REQUEST FOR RELIEF

Microsoft respectfully requests the Court to enter judgment in its favor and against LBS as follows:

- A. For judgment that Microsoft's Bing Maps, including but not limited to Bing Map's store-locator functionality, does not infringe any valid claim of the '956 patent;
- B. For judgment that all of the claims in the '956 patent are invalid;
- C. For a preliminary and permanent injunction precluding LBS, its officers, directors, employees, agents, and all other persons acting in concert or participation with them from suing for infringement or otherwise asserting infringement of the '956 patent against Microsoft's Bing Maps;
- D. For costs and reasonable attorneys' fees incurred in connection with this action;
- E. For a finding that this case is exceptional; and
- F. For such other and further relief as the Court deems just and proper.

DATED: February 24, 2012

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