

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.**

AVIGILON CORPORATION,

Plaintiff,

v.

HAWK TECHNOLOGY SYSTEMS, LLC,

Defendant.

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**PLAINTIFF AVIGILON CORPORATION'S  
COMPLAINT FOR DECLARATORY JUDGMENT**

Avigilon Corporation (“Avigilon”) hereby brings this action for declaratory judgment against Hawk Technology Systems, LLC (“Hawk”). Avigilon seeks, amongst other things, declaratory judgment of non-infringement of U.S. Patent No. RE43,462 (“the RE43,462 patent”).

**INTRODUCTION AND BACKGROUND**

1. Avigilon is a world leader in the development, production, and sale of high definition security systems. Founded in 2004, Avigilon designs and manufactures high-definition surveillance solutions that provide the world’s best image quality. Avigilon systems protect and monitor various locations worldwide including major corporations, government institutions, stadiums, retail environments, casinos, critical infrastructure, and transportation stations.

2. Founded in 2004, Avigilon invested three years in developing its products before offering its high definition surveillance systems on the market. Prior to Avigilon's entry to the market, the state of the art consisted of low resolution analog video surveillance systems. In contrast, Avigilon's system utilizes cameras having a resolution up to 29 megapixels. Avigilon designed its entire system, end-to-end, to handle the much larger flow of data necessary to capture and record high definition video.

3. On information and belief, Hawk is a Florida limited liability company formed two months ago on June 8, 2012.

4. On information and belief, Hawk's business is directed to owning and enforcing patents.

5. U.S. Patent No. 5,625,410 ("the '410 patent") issued on April 29, 1997. On April 28, 1999, an application was filed for reissuance of the '410 patent. The patent applicants submitted declarations stating in part that the applicants believed that they had claimed less than they had a right to claim.

6. On October 29, 1997, the '410 patent was assigned to Multi-Format, Inc. On September 3, 2008, Multi-Format filed suit asserting infringement of the '410 patent against Harrah's Entertainment, Inc. and NICE Systems, Inc. in the District of New Jersey. That case settled and was dismissed with prejudice on July 31, 2009.

7. On June 12, 2012, the '410 patent was reissued as U.S. Patent No. RE43,462. (Exhibit 1.) At the issuance of the RE43,462 patent, the '410 patent was surrendered.

8. On August 7, 2012, the RE43,462 patent was assigned to Hawk. That same day, August 7, 2012, Hawk sent at least two letters to Avigilon customers giving notice of the '410 patent.

9. Avigilon customer Oklahoma County Sheriff's Office, located in Oklahoma City, Oklahoma received a letter from Marc Shulman who asserted that he was a managing member of Hawk Technology Systems, LLC. (Exhibit 2.)

10. Mr. Shulman stated that Hawk had recently acquired the '410 patent and that Hawk was advising numerous companies that use video monitoring and conferencing systems about the Patent. Mr. Shulman enclosed a copy of the '410 patent with the letter.

11. The letter further requested the Oklahoma County Sheriff's Office to review independent claims 1, 8, 12, and 15 to ascertain whether the '410 patent infringes any system used by the Oklahoma County Sheriff's Office.

12. Avigilon customer Damar Services, located in Indianapolis, Indiana received a letter that was identical to the letter sent by Mr. Shulman to the Oklahoma County Sheriff's Office. (Exhibit 3) (attachment omitted).

13. In his letter to Damar Services, Mr. Shulman stated that Hawk had recently acquired the '410 patent and that Hawk was advising numerous companies that use video monitoring and conferencing systems about the Patent. Mr. Shulman enclosed a copy of the '410 patent with the letter.

14. Mr. Shulman's letter to Damar Services further asked the Oklahoma County Sheriff's Office to review independent claims 1, 8, 12, and 15 to ascertain whether the '410 patent infringes any system used by Damar Services.

15. Both the installations for the Oklahoma County Sheriff's Office and Damar Services are described in Case Studies on Avigilon's web site. Upon information and belief, Hawk learned about Avigilon's installations for the Oklahoma County Sheriff's Office and Damar Services from Avigilon's web site. Upon information and belief Hawk knows that Avigilon provided the systems operated by the Oklahoma County Sheriff's Office and Damar Services.

16. Hawk's letters to Oklahoma County Sheriff's Office and Damar Services effectively communicate the allegation that the Avigilon systems installed at those facilities infringe Hawk's patent. Avigilon has an obligation to defend its products and indemnify its customers from allegations of patent infringement.

17. At the time that Hawk wrote to the Oklahoma County Sheriff's Office and Damar Services about the '410 patent, the '410 patent had been surrendered.

18. Upon information and belief, Mr. Shulman knew that the '410 patent was surrendered and no longer existed. But, Mr. Shulman's letters to the Oklahoma County Sheriff's Office and Damar Services did not disclose that fact. Mr. Shulman's letters pretending that the '410 patent was an asset of Hawk were not forthcoming because, with the issuance of the RE43,462 patent, the '410 patent was surrendered and no longer exists.

19. What Mr. Shulman effectively communicated in his letters to the Oklahoma County Sheriff's Office and Damar Services was an allegation that Avigilon's systems infringe the RE43,462 patent.

20. Upon information and belief, Hawk is solely a licensing entity and without enforcement it receives no benefits from the RE43,462 patent.

21. Hawk has engaged in a course of conduct that shows a willingness to enforce its patents.

22. On information and belief, Avigilon expects that Hawk will initiate suit against Avigilon for patent infringement.

23. Based on the foregoing there is a substantial and justiciable controversy between Avigilon and Hawk that warrants declaratory judgment.

24. Avigilon brings this action for declaratory judgment against Hawk seeking declarations that (i) Avigilon and its products have not and do not infringe

any claim of the RE43,462 patent, and (ii) Avigilon is entitled to absolute and equitable intervening rights.

### **THE PARTIES**

25. Avigilon Corporation is a corporation organized and existing under the laws of Canada, with corporate headquarters at 858 Beatty St., 4<sup>th</sup> Floor, Vancouver, BC, Canada V6B 1C1.

26. On information and belief, Hawk Technology Systems, LLC is a limited liability company organized and existing under the laws of Florida with its principle place of business at 2 South Biscayne Blvd., Miami, FL 33131.

### **JURISDICTION AND VENUE**

27. This is a declaratory judgment action brought pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 et seq., for patent non-infringement and intervening rights arising under the patent laws of the United States, Title 35, U.S.C. § 1 et seq. Hawk's letters to Avigilon's customers identifies a patent, specific claims and systems sold by Avigilon. Hawk took the affirmative steps of contacting at two of Avigilon's customers and making implied assertion of its rights under the RE43,462 patent against systems provided by Avigilon. Avigilon disagrees with Hawk's implied assertions. An actual, substantial, and continuing justiciable controversy exists between Avigilon and Hawk, requiring a declaration of rights by this Court.

28. This Court has subject matter jurisdiction over the causes of action stated herein under 28 U.S.C. §§ 1331, 1338, 2201 and 2202, because this action concerns a federal question arising under the patent laws of the United States.

29. Hawk is subject to personal jurisdiction in this judicial district because Hawk has purposefully availed itself of the privilege of doing business in this judicial district and has sufficient minimum contacts with Florida to render the exercise of jurisdiction over Hawk compatible with due process. Hawk maintains its headquarters in this judicial district and transacts business in Florida.

**COUNT I: NON-INFRINGEMENT OF THE '486 PATENT**

30. Avigilon incorporates by reference and re-alleges paragraphs 1 through 29 above, as if fully set forth herein.

31. The systems provided by Avigilon to its customers and utilized by its customers, do not infringe and have not infringed, either directly or indirectly, any claim of the RE43,462 patent.

32. As a result of the acts described in the foregoing paragraphs, a substantial and justiciable controversy exists between Avigilon and Hawk of sufficient immediacy and reality to warrant the issuance of a declaratory judgment that SAP does not infringe any claim of the '486 patent under 35 U.S.C. § 271.

**COUNT II: EQUITABLE INTERVENING RIGHTS**

33. Avigilon incorporates by reference and re-alleges paragraphs 1 through 32 above, as if fully set forth herein.

34. At the time of the issuance of the RE43,462 patent, Avigilon had invested 8 years of effort to develop its high definition surveillance system products. It had grown from \$0 of sales in 2007 to more than \$60 million in sales. It had transitioned from a closely held start-up to a public company.

35. Avigilon is entitled to absolute and equitable intervening rights pursuant to 35 U.S.C. § 252.

**PRAYER FOR RELIEF**

WHEREFORE, Avigilon prays for judgment against Hawk as follows:

(a) A declaration that Avigilon's products and use of them by Avigilon's customers do not infringe, either directly or indirectly, any claim of the RE43,462 patent.

(b) A declaration that Avigilon has absolute and equitable intervening rights to the RE43,462 patent;

(c) An award to Avigilon of its costs, expenses and reasonable attorney fees; and

(d) An award to Avigilon of any other and further relief as this Court may deem just and proper.



Dated: August 17, 2012

s/Thomas Meeks  
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