IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

SPACECO BUSINESS SOLUTIONS, INC. Plaintiff, vs. MASS ENGINEERED DESIGN, INC. and JERRY MOSCOVITCH Defendants.	)	Case No.: 1:12-CV-02029-RBJ **FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF AND MONEY DAMAGES** **JURY TRIAL DEMANDED**

SpaceCo Business Solutions, Inc. ("SpaceCo") alleges for its First Amended Complaint against Mass Engineered Design, Inc. and Jerry Moscovitch (collectively, "Defendants") as follows:

PARTIES

1. SpaceCo is a corporation organized and existing under the laws of the state of Nevada, with its principal place of business at 13100 East Albrook Drive, Suite 100, Denver, Colorado, 80239.

2. On information and belief, Mass Engineered Design, Inc. is a corporation organized and existing under the laws of the province of Ontario, Canada.

3. On information and belief, Jerry Moscovitch is an individual and citizen and resident of the province of Ontario, Canada.

JURISDICTION AND VENUE

4. A portion of this action seeks a declaratory judgment under the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202. It presents an actual case or controversy under Article III of the United States Constitution and serves a useful purpose in clarifying and settling the legal rights at issue.

5. On information and belief, Jerry Moscovitch is the owner of U.S. Patent No. RE36,978 ("the '978 patent"), entitled "Dual Display System," a true and correct copy of which is attached hereto as Exhibit "A." On information and belief, Mass Engineered Design, Inc. is the licensee of the '978 patent.

6. Mass Engineered Design and Jerry Moscovitch have explicitly charged SpaceCo with infringement of the '978 patent.

7. SpaceCo seeks a judgment against Mass Engineered Design and Jerry Moscovitch that SpaceCo's products have not infringed and do not infringe the '978 patent and/or that the '978 patent is invalid.

8. This Court has subject matter jurisdiction over the declaratory judgment portion of this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 35 U.S.C. § 1 *et seq.*

9. This Court has subject matter jurisdiction over the claims of Abuse of Process and Malicious Prosecution pursuant to 28 U.S.C. § 1332, because SpaceCo is a resident of this state and both defendants are subjects of a foreign state, i.e. Canada, and the amount in controversy with respect to the Abuse of Process and Malicious Prosecution claims is in excess of $75,000.

10. Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1391 because: (i) a substantial part of the events giving rise to the claim occurred in this district, or (ii) the Defendants are subject to the Court's personal jurisdiction for the claims of this action in this district.

11. This Court has personal jurisdiction over Mass Engineered Design and Jerry Moscovitch because by suing SpaceCo for infringement of the '978 patent they have established minimum contacts with this forum and the exercise of jurisdiction over them would not offend traditional notions of fair play and substantial justice.

12. Upon information and belief, Mass Engineered Design and Jerry Moscovitch are doing business in this District.

13. Upon information and belief, the Defendants have delivered their products into the stream of commerce with the expectation that they will be purchased by consumers in Colorado.

14. Upon information and belief, the Defendants have purposefully availed themselves of the rights and benefits of Colorado law by engaging in systematic and continuous contacts with Colorado.

15. With respect to the Abuse of Process and Malicious Prosecution claims, this Court has personal jurisdiction over both of the Defendants because the Defendants have intentionally committed,

or aided, abetted, actively induced, contributed to, or participated in the commission of tortious acts in another jurisdiction that were expressly aimed at Colorado, with knowledge that the brunt of the injury would be felt in Colorado and which led to foreseeable harm and injury to SpaceCo, a resident of Colorado. Under the circumstances, the Defendants must "reasonably anticipate being haled into court" in Colorado to answer for their tortious acts against a Colorado resident.

16. If the Court should determine that it has personal jurisdiction over the Defendants for some, but not all of the claims alleged in this Complaint, the Court may exercise its supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) to hear all of the claims, because all of the claims arise out of a common nucleus of operative fact.

FACTS

17. SpaceCo manufactures and sells various ergonomic and office products, including *inter alia*, computer monitor arms.

18. On November 12, 2009, the Defendants filed a suit for patent infringement against SpaceCo and twenty-nine (29) other defendants in the United States District Court for the Eastern District of Texas, said case being styled *Mass Engineered Design, Inc., et al. v. 9X Media, Inc., et al.*, Case No. 2:09-cv-00358 ("the Texas action"). A true and correct copy of the complaint in the Texas action is attached hereto as Exhibit "B."

19. On August 2, 2012, the Defendants voluntarily dismissed all of the defendants in the aforesaid Texas action. A true and correct copy of the order dismissing the Texas action is attached hereto as Exhibit "C." During the almost three (3) years of pendency of the Texas action, the Defendants took no steps to prosecute the Texas action.

20. SpaceCo is not liable for infringing any asserted claims of the '978 patent because each such claim is invalid and the accused SpaceCo products have not infringed and do not infringe any valid claims of the '978 patent.

21. By virtue of the dismissal of the Texas action, the Defendants deprived SpaceCo of the ability of challenge the allegation of infringement, but have not withdrawn those allegations of

infringement. Therefore, SpaceCo operates with "a cloud over its business" because of these unresolved infringement allegations. SpaceCo continues to have a reasonable apprehension of suit with respect to alleged infringement of the '978 patent by sale and/or use of SpaceCo products.

22. Accordingly, there is an actual, substantial and continuing justiciable controversy between SpaceCo and the Defendants regarding the validity of the '978 patent and regarding the alleged infringement of the '978 patent by SpaceCo or by use of SpaceCo's products.

23. Defendants cannot factually prove, as to each or as to any of the accused products, that they possess all elements of any claim in the '978 Patent.

24. Some or all of the SpaceCo products alleged to infringe fail to meet every limitation of the independent claims of the '978 patent, because they do not have a "base member" as required by the claims.

25. Some or all of the SpaceCo products alleged to infringe fail to meet every limitation of the independent claims of the '978 patent, because they do not have a "positioning means for positioning the displays" as required by the claims.

26. Some or all of the SpaceCo products alleged to infringe fail to meet every limitation of the independent claims of the '978 patent, because they do not have an "an arm assembly for supporting the displays" as required by the claims.

27. Some or all of the SpaceCo products alleged to infringe fail to meet every limitation of the independent claims of the '978 patent, because they do not have a "support means for supporting the arm assembly from the base member" as required by the claims.

28. Some or all of the SpaceCo products alleged to infringe fail to meet every limitation of the independent claims of the '978 patent, because they do not have a "mounting means for mounting the displays to the arm assembly" as required by the claims.

29. Some or all of the SpaceCo products alleged to infringe fail to meet every limitation of the independent claims of the '978 patent, because they do not have a "means for adjusting the angular

orientation of each of the displays relative to the arm assembly to thereby permit said displays to be angled toward each other to a desired degree" as required by the claims.

30. Upon information and belief, Mass Engineered Design and/or Jerry Moscovitch has sold or offered for sale more than a year prior to the priority date of the '978 Patent, products identified as LCD Dual Monitor Assembly M05575-5578, M05436-37, M38569, M05686-87, and M04841-44 ("the LCD Dual Monitor Assemblies").

31. These LCD Dual Monitor Assemblies are prior art to the '978 patent.

32. These LCD Dual Monitor Assemblies were not considered by the United States Patent Examiner during the prosecution of the application which matured into the '978 patent.

33. The claims of the '978 Patent are invalid as being either anticipated and/or obvious, in view of these LCD Dual Monitor Assemblies.

34. Upon information and belief, Bloomberg L.P. has sold or offered for sale more than a year prior to the priority date of the '978 Patent, a product identified as the Bloomberg Terminal.

35. The Bloomberg Terminal is prior art to the '978 patent.

36. The Bloomberg Terminal was not considered by the United States Patent Examiner during the prosecution of the application which matured into the '978 patent.

37. The claims of the '978 Patent are invalid as being either anticipated and/or obvious, in view of the Bloomberg Terminal.

38. Upon information and belief, the New York Stock Exchange has used more than a year prior to the priority date of the '978 Patent, a product identified as the NYSE Trading Display System.

39. The NYSE Trading Display System is prior art to the '978 patent.

40. The NYSE Trading Display System was not considered by the United States Patent Examiner during the prosecution of the application which matured into the '978 patent.

41. The claims of the '978 Patent are invalid as being either anticipated and/or obvious, in view of the NYSE Trading Display System.

42. The notion of mounting two or more computer monitors on a single arm was well-known in the prior art prior to the priority date of the '978 patent.

43. Patents, publications and/or devices on sale in the U.S. prior to the critical date and/or prior to the U.S. effective filing date of the '978 patent, including, *inter alia*,

US 5,076,524 (the '524 patent)
US 5,222,780 (the '780 patent)
Ergotron Ergonomic Computer Workstations Component Product Catalog (the 1992 Catalog)
Ergotron LAN Racking and Cable Management Systems product catalog. (the 1995 Catalog)
Bloomberg Terminal (the LCD Dual Monitor Assembly)
US 5,132,492 (the '492 patent)
US 5,329,289 (the '289 patent)
US 5,505,424 (the '424 patent)
Standard Handbook of Machine Design, 2nd Ed., Chapter 41—Linkages, McGraw-Hill (the Handbook)
US 5,594,620 (the '620 patent)
US 5,673,170 (the '170 patent)
US 5.590,021 (the '021 patent)
US D295,415 (the '415 patent)
DE 40 27 556 (the '556 publication)
JP 62-197815 (the '815 publication)
JP 62-146225 (the '225 publication)
JP 63-233417 (the '417 publication)

are prior art to the '978 Patent, and alone or in combination render the claims thereof invalid as being either anticipated and/or obvious.

44. Other prior art exists that alone or in combination renders the claims of the '978 patent invalid as being either anticipated and/or obvious.

45. Jerry Moscovitch did not invent the subject matter claimed in the '978 patent, but derived the information from Bloomberg, L.P. and Michael Bloomberg. Therefore, the '978 patent is invalid under 35 U.S.C. §102(f).

46. Certain constructions of certain terms in the claims of the '978 patent are not enabled by the written description of the '978 patent in violation of 35 U.S.C. § 112.

47. In arguing for the patentability of the claims, the applicant distinguished the prior art cited by the United States Patent Examiner by stating that the claimed invention provides "a single structure which supports all the constituent parts of the arm assembly."

48. The Defendants are estopped from claiming equivalents which are outside the scope of that limitation argued during the prosecution history.

49. Certain of the SpaceCo products identified as allegedly infringing are sold by SpaceCo to the United States government, under a government contract pertaining to same.

FIRST CLAIM FOR RELIEF

(Declaratory Relief- Non-Infringement of the '978 Patent)

50. SpaceCo incorporates by reference each and every allegation set forth in paragraphs 1-49 as if fully set forth herein.

51. SpaceCo does not make, use, offer for sale, import or sell, and has not made, used, offered for sale, imported or sold in the United States any products which infringe any valid and enforceable claims of the '978 patent, either directly or indirectly, contributorily or otherwise, and has not induced any others to infringe said patent.

SECOND CLAIM FOR RELIEF

(Declaratory Relief- Invalidity of the '978 Patent)

52. SpaceCo incorporates by reference each and every allegation set forth in paragraphs 1-51 as if fully set forth herein.

53. The '978 Patent and each and every claim thereof is invalid for failing to comply with the requirements for patentability under the Patent Laws of the United States, including 35 U.S.C. §§ 102, 103, and 112.

THIRD CLAIM FOR RELIEF

(Declaratory Relief- Prosecution History Estoppel Relative to the '978 Patent)

54. SpaceCo incorporates by reference each and every allegation set forth in paragraphs 1-53 as if fully set forth herein.

55. Mass is estopped from construing or interpreting the claims of the '978 patent to cover any accused products, by reason of the proceedings in the United States Patent and Trademark Office during prosecution of the application upon which the '978 patent issued, and of applications related thereto as well as the admissions and representations made therein by and/or on behalf of the applicant for said patents.

FOURTH CLAIM FOR RELIEF

(Declaratory Relief- Waiver, Estoppel and Laches)

56. SpaceCo incorporates by reference each and every allegation set forth in paragraphs 1-55 as if fully set forth herein.

57. Mass is barred from enforcing the '978 Patent against SpaceCo on grounds of waiver, laches, and estoppel due to action or inaction by Mass which has resulted in extreme prejudice and detriment to SpaceCo and/or its privies.

FIFTH CLAIM FOR RELIEF

(Declaratory Relief- Government Contractor Immunity)

58. SpaceCo incorporates by reference each and every allegation set forth in paragraphs 1-57 as if fully set forth herein.

59. SpaceCo has immunity from suit under 28 U.S.C. § 1498 for any alleged infringement arising out of devices which were manufactured for and/or sold to the United States government, and Mass's only remedy against said allegedly infringing products is suit against the United States in the Court of Federal Claims.

SIXTH CLAIM FOR RELIEF

(Abuse of Process)

60. SpaceCo incorporates by reference each and every allegation set forth in paragraphs 1-59 as if fully set forth herein.

61. On November 12, 2009, the Defendants filed a suit for patent infringement against SpaceCo and twenty-nine (29) other defendants in the United States District Court for the Eastern District of Texas, said case being styled *Mass Engineered Design, Inc., et al. v. 9X Media, Inc., et al.*, Case No. 2:09-cv-00358 ("the Texas action").

62. Both Mass Engineered Design Inc. and Jerry Moscovitch were plaintiffs in the Texas action.

63. The Defendants intentionally brought the Texas action with an ulterior purpose in the use of judicial proceedings. This ulterior purpose was the extraction of royalties from SpaceCo to which they were not entitled, by alleging objectively and subjectively baseless claims of infringement against SpaceCo, in a hostile forum and intermingled with many other defendants in the hopes that SpaceCo would enter into a settlement on these baseless claims.

64. The Defendants engaged in willful and intentional actions in the use of process in the Texas action that are not proper in the regular conduct of a proceeding. These willful actions include: 1. bringing baseless claims of infringement against SpaceCo; 2. taking no action to advance the prosecution of the Texas action for almost three (3) years; and 3. when compelled by the Texas court to take action to prosecute the case, voluntarily dismissing the case without prejudice. These intentional actions were expressly aimed at SpaceCo, a Colorado resident, with knowledge that the brunt of the injury would be felt in Colorado.

65. As a direct and proximate result of the Defendants' actions, SpaceCo incurred damages in the form of the costs of defending the Texas action in an amount in excess of $75,000, the exact amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF

(Malicious Prosecution)

66. SpaceCo incorporates by reference each and every allegation set forth in paragraphs 1-65 as if fully set forth herein.

67. The Defendants, as named plaintiffs in the Texas action, intentionally contributed to bringing the prior Texas action against SpaceCo.

68. The Texas action ended in favor of SpaceCo by virtue of the Defendants' voluntary dismissal of the Texas action not made in furtherance of settlement.

69. The Defendants' had no probable cause to bring the Texas action because there is no basis in fact or in law to allege that the SpaceCo products alleged to infringe by the Defendants actually do infringe any claim of the subject patent.

70. The Defendants acted intentionally and with malice, in that their purpose was the extraction of royalties from SpaceCo to which they were not entitled, by alleging objectively and subjectively baseless claims of infringement against SpaceCo, in a hostile forum and intermingled with many other defendants in the hopes that SpaceCo would enter into a settlement on these baseless claims. These intentional actions were expressly aimed at SpaceCo, a Colorado resident, with knowledge that the brunt of the injury would be felt in Colorado.

71. As a direct and proximate result of the Defendants' actions, SpaceCo incurred damages in the form of the costs of defending the Texas action in an amount in excess of $75,000, the exact amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, SpaceCo requests the Court to enter judgment in its favor and against Mass Engineered Design, Inc. and Jerry Moscovitch as follows:

a. An order entering judgment in favor of SpaceCo and against Mass Engineered Design, Inc. and Jerry Moscovitch;

b. An order declaring SpaceCo has not directly or indirectly infringed and is not directly or indirectly infringing the '978 patent;

c. An order declaring that one or more claims of the '978 patent are invalid;

d. Judgment in favor of SpaceCo and against the Defendants, jointly and severally, that the Defendants have engaged in Abuse of Process, and awarding SpaceCo its costs and attorneys' fees from the Texas action, in an amount in excess of $75,000, the exact amount to be proven at trial.

e. Judgment in favor of SpaceCo and against the Defendants, jointly and severally, that the Defendants have engaged in Malicious Prosecution, and awarding SpaceCo its costs and attorneys' fees from the Texas action, in an amount in excess of $75,000, the exact amount to be proven at trial.

f. An order awarding SpaceCo its costs including expert fees, disbursements, and reasonable attorneys' fees incurred in this action pursuant to 35 U.S.C. § 285; and

g. An order granting such further relief as is just and proper.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38(b), SpaceCo demands a trial by jury for all issues so triable.

Dated this 30th day of November, 2012.

In accordance with D.C.COLO. L. Civ. R. 5.6 and D.C.COLO. ECF Procedures §V a duly signed original of this document is on file at undersigned counsel's office and will be made available for inspection by other parties and/or the Court upon request.

Respectfully Submitted,

BY: s/Carl A. Hjort, III
Carl A. Hjort, III, Esq.
Colorado Bar No.: 42108
SpaceCo Business Solutions, Inc.
13100 East Albrook Drive
Suite 100
Denver, CO 80239
Telephone: 303-350-2204
E-mail: chjort@spaceco.com

Attorney for Plaintiff, SpaceCo Business Solutions, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 30, 2012, I electronically filed the foregoing with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

Robert A. Auchter, Esq.
McKool Smith, P.C.
1999 K Street NW, Suite 600
Washington, D.C. 20006
Telephone: 202-370-8300
Email: rauchter@mckoolsmith.com
Attorney for Defendants Mass Engineered Design, Inc. and Jerry Moscovitch

s/Carl A. Hjort, III
Carl A. Hjort, III