

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

CTP INNOVATIONS, LLC,)	
)	
Plaintiff,)	
)	Civil Action No. 2:13-cv-02422-JPM-tmp
v.)	
)	JURY TRIAL DEMANDED
MAGNA IV COLOR IMAGING, INC.,)	
)	
Defendant.)	
)	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff CTP Innovations, LLC, for its First Amended Complaint against Defendant Magna IV Color Imaging, Inc., states as follows:

I. THE PARTIES

1. Plaintiff CTP Innovations, LLC (“CTP”) is a Delaware limited liability company.
2. Upon information and belief, Defendant Magna IV Color Imaging, Inc. (“Defendant”) is an Arkansas Corporation, with its principal place of business located at 2401 Commercial Lane, Little Rock, Arkansas 72206. Defendant does business in the State of Tennessee, including in this District. Defendant owns and operates a website available at the domain name www.magna4.com. Defendant may be served with process through service upon its registered agent, Kent Middleton, 2401 Commercial Lane, Little Rock, Arkansas 72206.

II. NATURE OF ACTION

3. This is a patent infringement action to stop Defendant’s infringement of U.S. Patent Nos. 6,611,349 (the “349 Patent”) and 6,738,155 (the “155 Patent”).

III. PRELIMINARY STATEMENT

4. CTP disputes that the level of specificity in this First Amended Complaint is required by *K-Tech Telecomms., Inc. v. Time Warner Cable, Inc.*, 714 F.3d 1277 (Fed. Circ. 2013) (cert. denied *DirectTV, et al. v. K-Tech Telecomms., Inc.*, Case No. 13-18, ---S.Ct.---, 2014 WL 273524 (Jan. 27, 2014)). CTP affirmatively asserts that it sufficiently pled its causes of action and claims for relief in the initial complaint filed in this case. *See* Doc. 1. A plaintiff is not required to identify a specific device or product within a system to meet the Form 18 standard. *K-Tech*, 714 F.3d at 1286. A plaintiff may satisfy the Form 18 standard by alleging infringement through a general category of product or service. *Id.*; *see also*, *R+L Carriers, Inc. v. DriverTech LLC (In re Bill of Lading Transmission & Processing Sys. Patent Litig.)* (“*In re Bill of Lading*”), 681 F.3d 1323, 1335 (Fed. Cir. 2012); *Clouding IP, LLC v. Amazon.com, Inc.*, Case No. 12-641-LPS, 2013 U.S. Dist. LEXIS 73655 (D. Del. May 24, 2013); *Magna Mirrors of Am., Inc. v. 3M Co.*, Case No. 07-10688, 2013 U.S. Dist. LEXIS 22785, *8 (E.D. Mich. Feb. 20, 2013). This is especially true where operation of a method or system is not fully ascertainable without discovery. *See K-Tech*, 714 F.3d at 1286. “A defendant cannot shield itself from a complaint for direct infringement by operating in such secrecy that the filing of a complaint itself is impossible.” *Id.* The filing of this First Amended Complaint is not intended to be nor should be construed as an admission, acquiescence, or waiver of the right to assert that CTP’s initial complaint in this case (and complaints filed in another other action currently pending or filed in the future) are or will be sufficiently pled on the Federal Circuit’s standard for pleading in *K-Tech*.

IV. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1338(a) because it arises under the Patent Laws of the United States, United States Code, Title 35.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(c) and 1400(b). On information and belief, Defendant has a regular and established place of business in this district, has transacted business in this district, and/or has committed acts of patent infringement in this district.

7. On information and belief, Defendant is subject to this Court's specific and general personal jurisdiction pursuant to due process and/or the Tennessee Long Arm Statute, due at least to its substantial business in this forum including but not limited to: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in Tennessee and in this district.

V. GENERAL SUMMARY OF THE TECHNOLOGY AT ISSUE

8. The inventions in the '349 and '155 Patents relate generally to the field of publishing and printing.

9. More specifically, the inventions relate to systems and methods of providing publishing and printing services via a communication network involving computer to plate technology.

10. Simplistically, computer to plate technology involves transferring an image to printing plate without the middle step of creating a film of the image that is imprinted on the plate. The plate is then used in a printing press to transfer the image to different types of media,

for example, but not by way of limitation, newspaper, card stock, or standard paper. By directly transferring the image to the plate, the printing company eliminates the need for film and related developer chemicals, improves image quality, and may produce plates more quickly. The claimed methods and systems provide a solution for communicating and managing printing and publishing services without the need to physically transfer copies of design files and proofs through workflows that result in the generation of a plate ready file.

VI. BACKGROUND OF THE INVENTIONS IN THE '349 AND '155 PATENTS

11. Key steps for producing printed materials using a plate process include (1) preparing copy elements for reproduction, (2) prepress production, (3) platemaking, (4) printing, and (5) binding, finishing and distribution.

12. In the printing production process, an “end user” prepares copy elements for reproduction. In this “design” stage of the printing process, the end user provides images and data using slides or computer files to create one or more “pages.” Pages can be designed using computer programs such as QuarkXpress, Adobe InDesign, Adobe Illustrator, Photoshop, or other printing or publishing software packages. Prior to the inventions claimed in the ‘155 and ‘349 patents, slides or computer disks containing pages to be printed were sent (via mail or express carrier) to be prepared for creation of a plate.

13. In the prepress production stage, the end user input (or “copy”) is transformed into a medium that is reproducible for printing. Typically, prepress involves typesetting, illustration, page building and design, image capture, image color correction, file conversion, RIPing, trapping, proofing, imposition, filmsetting, and platesetting. “Proofing” involves producing a proof, or sample, of what the printed product will look like. Prior to the inventions claimed in the ‘155 and ‘349 patents, the proof was sent by mail or express carrier to the end user for review

and approval. After alterations are made, new proofs are sent to the end user. Once approval of the proof is given by the end user, a medium, such as a computer to plate (CTP) file is produced and sent to the printer. “Imposition” involves the set of pages on a particular plate as well as their positioning and orientation. Imposition is particularly important in the creation of booklets or catalogs, where pages are positioned using register marks to assist in the stripping, collating, and folding of the printed product.

14. In the platemaking stage, a “printer” manufactures a printing plate using the medium created during prepress. Where a CTP file is used, the printer converts the CTP file into a printing plate or goes directly to a digital press. In the printing stage, the printer uses the printing plate to create the printed product. In the binding, finishing and distribution stage, the printed product is prepared in its final form.

15. Each step in the printing production process described briefly above can be accomplished using a variety of different known systems and techniques. Nevertheless, such conventional systems have many delays, particularly in the transporting of pages and proofs to and from the end user and prepress provider. Due to delays and the fragmented nature of conventional printing production systems, errors often occur. Further, typical printing production systems are limited in their ability to re-purpose data, manage content of pages, and piece together individual processes or tasks to establish an efficient production system or “workflow”. Indeed, no conventional system prior to the inventions claimed in the ‘349 and ‘155 Patents combines prepress, content management, infrastructure (server, storage & distribution) and workflow services.

16. Prior to the inventions claimed in the ‘349 and ‘155 Patents, conventional printing and publishing systems generally include Macintosh computers or workstations which

communicate with each other using the AppleTalk protocol. AppleTalk protocol could not, however, be communicated over switched networks such as the Internet and private networks where nodes in the network have IP (Internet Protocol) addresses. As such, conventional systems could not merely be coupled to a communication network for remotely controlling design, prepress and print processes.

17. Prior to the inventions claimed in the '349 and '155 Patents, there was a need for a system which combines design, prepress, content management, infrastructure (server, storage & distribution) and workflow. For end users in particular, there was a need for a system and a method to gain control of the design, prepress, and print processes. To save time and costs, there was a need to eliminate manual shipping of proofs back and forth to a prepress provider. Further, there was a need for a prepress capability at a local facility without the time and costs of shipping proofs back and forth to a prepress provider. Even further, there was a need for a system and method to provide plate-ready files over a communications network for delivery to a CTP device. Moreover, for commercial printers, there was a need for a system and method to remotely drive a plate-setting device located at a printer's facility. Further, there was a need to decrease the amount of time necessary to generate printing plates after processing of the pages (i.e., the cycle time). Even further, there was a need for providing access to the functionality of high-end server, storage, and networking equipment to the printer facility without the associated capital investments.

VII. INTER PARTES REVIEW DENIED

18. On July 29, 2013, Printing Industries of America ("PIA") filed a petition to institute an *inter partes* review proceeding with the United States Patent and Trademark Office's Patent

Trial and Appeal Board (“PTAB”) on July 29, 2013. This case was captioned *Printing Industries of America v. CTP Innovations, LLC* (Case No. IPR2013-00474) (“IPR2013-00474”).

19. In IPR2013-00474, the petitioner challenged the validity of each and every claim in the ‘349 patent.

20. On August 2, 2013, Printing Industries of America filed a petition to institute a second *inter partes* review proceeding with the United States Patent and Trademark Office’s Patent Trial and Appeal Board (“PTAB”) on July 29, 2013. This case was captioned *Printing Industries of America v. CTP Innovations, LLC* (Case No. IPR2013-00489) (“IPR2013-00489”).

21. In IPR2013-00489, the petitioner challenged the validity of each and every claim in the ‘155 patent,

22. On December 30, 2013, PTAB found that the petition in IPR2013-00489 did not demonstrate that there was a reasonable likelihood that the petitioner would prevail with respect to invalidating at least one of the claims in the ‘155 Patent.

23. A true and correct copy of PTAB’s determination in IPR2013-00489 is attached hereto as **Exhibit 3**.

24. On December 31, 2013, PTAB found that the petition in IPR2013-00474 did not demonstrate that there was a reasonable likelihood that the petitioner would prevail with respect to invalidating at least one of the claims in the ‘349 Patent

25. A true and correct copy of PTAB’s determination in IPR2013-00474 is attached hereto as **Exhibit 4**.

26. Although it had the opportunity to file a motion for rehearing in both IPR2013-00474 and IPR2013-00489, PIA declined to file any motion for rehearing.

27. Instead, PIA requested the return of refund of its Post-Institution Fees.

28. The determinations by PTAB in IPR2013-00474 and IPR2013-00489 are not appealable.

VIII. INFRINGEMENT OF THE ‘349 AND ‘155 PATENTS IS “UBIQUITOUS”

29. Upon information and belief, PIA is the largest trade association representing the printing and graphic communications industry in the United States.

30. Michael Makin, president and CEO of PIA (petitioner in IPR2013-00474 and IPR2013-00489) testified before the Senate Committee on the Judiciary, that the inventions in the ‘349 and ‘155 Patents

relate[] to how a digital file, like a PDF file, is handled and manipulated in a print production operation up until the time it is used to image a printing plate. This method of digital workflow and plate imaging was new in the 1990s when the patent was issued but has become ubiquitous in the industry now.

Statement of Michael F. Makin, MBA, President & CEO of Printing Industries of America, Before the Senate Committee on the Judiciary, titled “Protecting Small Business and Promoting Innovation by Limiting Patent Troll Abuse,” dated December 17, 2013 (the “PIA Statement”), at 4-5 (emphasis in original). A true and correct copy of the PIA Statement is attached hereto as

Exhibit 5.

31. In so making this statement, it is clear that Makin and PIA were able to determine from the face of the ‘349 and ‘155 Patents that infringement of the ‘349 and ‘155 was “ubiquitous in the industry now.”

IX. CAUSES OF ACTION

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 6,611,349

32. CTP incorporates the preceding paragraphs as though fully set forth herein.

33. CTP owns, by assignment, the '349 Patent entitled "System and Method of Generating a Printing Plate File in Real Time Using a Communication Network." A true and correct copy of the '349 Patent is attached hereto as **Exhibit 1**.

34. Upon information and belief, Defendant, in violation of 35 U.S.C. § 271, has infringed, literally or through the doctrine of equivalents, and continues to infringe the '349 Patent through Defendant's making, using, selling, and/or offering for sale in the United States, and specifically in this district, at least printing and publishing services that involve the generation of a plate-ready file in real time using a communication network that includes, without limitation, storage; content management; infrastructure; and the workflow involved with the generation of plate-ready files (the "Infringing Services").

35. Defendant has not given the Infringing Services a specific and publicly-available name. Accordingly, Plaintiff cannot provide the name used by Defendant for such services without the benefit of discovery.

36. Exemplary Infringing Services include, without limitation, systems and methods used by Defendant in connection with, at least, its offset, sheet-fed, and web printing services that involve workflows related to plate-ready files and/or the generation of such files.

37. Exemplary Infringing Services do not include variable data printing because that type of printing does not involve the generation of a plate-ready file.

38. Defendant has sufficient experience and knowledge of computer to plate technology generally, and of its systems and methods specifically, to determine which of its systems and methods involve the generation of plate-ready files.

39. Defendant has sufficient experience and knowledge of computer to plate technology generally, and of its systems and methods specifically, to determine which of its systems and methods do not involve the generation of plate-ready files.

40. Defendant has had actual notice of the '349 Patent since at least as early as its receipt of a letter from CTP's counsel regarding infringement of the '349 Patent sent on April 19, 2013, and certainly by date of service of the initial complaint filed in this case.

41. On information and belief, Defendant will continue to infringe the '349 Patent unless enjoined by this Court.

42. On information and belief, Defendant's infringement of the '349 Patent is, has been, and continues to be willful and deliberate in whole or in part because Defendant received notice of infringement through a letter dated April 19, 2013, a second letter dated May 8, 2013, and the initial complaint in this action yet continues to engage in its infringing conduct.

43. As a direct and proximate result of Defendant's infringement of the '349 Patent, CTP has been and continues to be damaged in an amount yet to be determined.

44. Unless Defendant's ongoing infringement is enjoined, CTP will suffer irreparable injury for which there is no adequate remedy at law.

45. This is an exceptional case such that CTP should be entitled to its reasonable attorney fees and expenses incurred in prosecuting this action and defending any counterclaims brought by Defendant. The bases for a finding of an exceptional case include, without limitation, the needless delays caused by Defendant's pattern and practice of unnecessary motion practice.

COUNT II

INFRINGEMENT OF U.S. PATENT NO. 6,738,155

46. CTP incorporates the preceding paragraphs as though fully set forth herein.

47. CTP owns, by assignment, the '155 Patent entitled "System and Method of Providing Publishing and Printing Services Via a Communications Network." A true and correct copy of the '155 Patent is attached hereto as **Exhibit 2**.

48. Defendant, in violation of 35 U.S.C. § 271, has infringed, literally or through the doctrine of equivalents, and continues to infringe the '155 Patent through Defendant's making, using, selling, and/or offering for sale in the United States, and specifically in this district, at least printing and publishing services via a communication network that include, without limitation, the Infringing Services.

49. Defendant has not given the Infringing Services a specific and publicly-available name. Accordingly, Plaintiff cannot provide the name used by Defendant for such services without the benefit of discovery.

50. Exemplary Infringing Services include, without, limitation the systems and methods used by Defendant in connection with, at least, its offset, sheet-fed, and web printing services that involve workflows related to plate-ready files and/or the generation of such files.

51. Exemplary Infringing Services do not include variable data printing because that type of printing does not involve the generation of a plate-ready file.

52. Defendant has sufficient experience and knowledge of computer to plate technology generally, and of its systems and methods specifically, to determine which of its systems and methods involve the generation of plate-ready files.

53. Defendant has had actual notice of the '155 Patent since at least as early as its receipt of a letter from CTP's counsel regarding infringement of the '155 Patent sent on April 19, 2013, and certainly by date of service of the initial complaint filed in this case.

54. On information and belief, Defendant will continue to infringe the '155 Patent unless enjoined by this Court.

55. On information and belief, Defendant's infringement of the '155 Patent is, has been, and continues to be willful and deliberate in whole or in part because Defendant received notice of infringement through a letter dated April 19, 2013, a second letter dated May 8, 2013, and the initial complaint in this action yet continues to engage in its infringing conduct.

56. As a direct and proximate result of Defendant's infringement of the '155 Patent, CTP has been and continues to be damaged in an amount yet to be determined.

57. Unless Defendant's ongoing infringement is enjoined, CTP will suffer irreparable injury for which there is no adequate remedy at law.

58. This is an exceptional case such that CTP should be entitled to its reasonable attorney fees and expenses incurred in prosecuting this action and defending any counterclaims brought by Defendant. The bases for a finding of an exceptional case include, without limitation, the needless delays caused by Defendant's pattern and practice of unnecessary motion practice.

X. REQUEST FOR RELIEF

Wherefore, CTP requests the following relief:

1. A judgment in favor of CTP that Defendant has infringed the '349 Patent and that such infringement was willful;
2. A judgment in favor of CTP that Defendant has infringed the '155 Patent and that such infringement was willful;
3. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all other actors acting in active concert therewith from infringing the '349 Patent;

4. A permanent injunction enjoining Defendant and its officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and all other actors acting in active concert therewith from infringing the '155 Patent;

5. A judgment and order requiring Defendant to pay CTP its damages in an amount not less than a reasonable royalty, treble damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '349 Patent, as provided under 35 U.S.C. § 284;

6. A judgment and order requiring Defendant to pay CTP its damages in an amount not less than a reasonable royalty, treble damages, costs, expenses, and prejudgment and post-judgment interest for Defendant's infringement of the '155 Patent, as provided under 35 U.S.C. § 284;

7. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285, and awarding to CTP its reasonable attorney fees and expenses; and

8. Any and all other relief that the Court deems just and proper.

XI. JURY DEMAND

CTP requests a jury for all issues so triable.

Respectfully submitted,

BAKER, DONELSON, BEARMAN, CALDWELL
& BERKOWITZ, P.C.

s/ Samuel F. Miller
Samuel F. Miller, TN BPR No. 22936
Maia T. Woodhouse, TN BPR No. 30438
Baker Donelson Center
211 Commerce Street, Suite 800
Nashville, Tennessee 37201
Telephone: (615) 726-5594
Fax: (615) 744-5594
Email: smiller@bakerdonelson.com
Email: mwoodhouse@bakerdonelson.com

Attorneys for CTP Innovations, LLC

CERTIFICATE OF SERVICE

On February 25, 2014, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which served a copy on the following through notice of electronic filing:

Mark Vorder-Bruegge, Jr.
Matthew F. Jones
Ahsaki Baptist
Wyatt Tarrant & Combs, LLP
1715 Aaron Brenner Drive, Suite 800
Memphis, TN 38120-4367
mvorder-bruegge@wyattfirm.com
mjones@wyattfirm.com

Richard Blakely Glasgow
Patrick D. Wilson
Wright, Lindsey & Jennings LLP
200 West Capitol Avenue, Suite 2300
Little Rock, Arkansas 72201
bglasgow@wlj.com
pwilson@wlj.com

s/ Samuel F. Miller
Samuel F. Miller