

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

BROADSIGN INTERNATIONAL, LLC,	x	
	:	
	:	
	:	
Plaintiff,	:	Civil Action No.
	:	
v.	:	JURY TRIAL REQUESTED
	:	
T-REX PROPERTY AB,	:	
	:	
	:	
Defendant.	:	
	:	
	x	

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, BroadSign International, LLC (“BroadSign”), brings this action for a declaratory judgment against Defendant, T-Rex Property AB (“T-Rex”). BroadSign seeks, among other things, a declaratory judgment of non-infringement of U.S. Patent No. RE39,470 (“the ’470 patent”) (attached hereto as Exhibit 1); U.S. Patent No. 7,382,334 (“the ’334 patent”) (attached hereto as Exhibit 2); and U.S. Patent No. 6,430,603 (“the ’603 patent”) (attached hereto as Exhibit 3) (collectively, the “Patents-in-Suit”), and that BroadSign has intervening rights with respect to the ’470 patent. In support thereof, BroadSign alleges as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment of non-infringement of the ’470 patent, the ’334 patent, and the ’603 patent, and for intervening rights to the ’470 patent.

THE PARTIES

2. Plaintiff is a Delaware limited liability company with its principal place of business located at 453 N. Lindbergh Blvd. St. Louis, Missouri 63141. BroadSign is an industry leader in the business of providing digital out-of-home software and solutions for

digital signage and displays in venues such as airports, cinemas, shopping malls and offices.

3. Upon information and belief, Defendant T-Rex is a company organized and existing under the laws of Sweden

4. Upon information and belief, T-Rex's business is directed to owning and enforcing in litigation the Patents-in-Suit. Upon information and belief, over the last several years, T-Rex has filed at least 43 patent infringement lawsuits against 65 or more defendants in 17 judicial districts located throughout the United States. Upon information and belief, T-Rex does not itself manufacture or sell any products or offer for sale any products or services in the United States.

JURISDICTION AND VENUE

5. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§2201, *et seq.*, and under the Patent Laws of the United States, as enacted under Title 35 of the United States Code. This Court has jurisdiction over this action pursuant to 35 U.S.C. §§ 271, *et seq.*, and 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

6. This Court has both general and specific personal jurisdiction over T-Rex because T-Rex regularly conducts its enforcement and licensing business in New York State. T-Rex has also conducted business in and directed at New York pertaining to the Patents-in-Suit. T-Rex has at least conducted business in New York by filing suit in this forum state in an attempt to enforce the Patents-in-Suit. T-Rex most recently filed suit in the United States District Court for the Southern District of New York on February 1, 2016, asserting these same three Patents-in-Suit in an action against Blue Outdoor Holdings, LLC and its subsidiaries (*T-Rex Property AB v. Blue Outdoor LLC*, et. al., 1-16-cv-00733-DLC). T-Rex has filed numerous other suits asserting one or more of these patents in the United States District Court for the Southern District of New York located including the following: *T-Rex Property AB, v. Adspace Networks, Inc.*, 1-15-cv-09073-DLC, filed on November 18, 2015

(’470 patent and ’334 patent); *T-Rex Property AB, v. Interactivation Health Networks, LLC*, et al., 1-15-cv-08259-PKC, filed on October 20, 2015 (’470 patent); *T-Rex Property AB, v. Wellness Network, LLC*, 1-15-cv-07847-PKC, filed on October 5, 2015 (’470 patent); and *T-Rex Property AB, v. Captivate, LLC*, 1-15-cv-04188-PAE, filed on May 29, 2015 (’470 patent and ’334 patent).

7. Venue is proper in this Court under 28 U.S.C. § 1391 (b) and 1391(c) because T-Rex is subject to personal jurisdiction in this judicial district and has conducted business in this judicial district. Additionally, T-Rex has accused at least two of BroadSign’s customers (Blue Outdoor Holdings and Adspace Networks) of patent infringement through their use of BroadSign’s products in this judicial district, and such products are being used in this judicial district.

THE SUBSTANTIAL CONTROVERSY EXISTS BETWEEN THE PARTIES

8. Upon information and belief, T-Rex is the assignee and owner of the right, title and interest in and to the Patents-in-Suit, including the right to assert all causes of action arising under the Patents-in-Suit and the right to any remedies for infringement.

9. Upon information and belief, the business of T-Rex in the United States is to enforce one or more of the Patents-in-Suit against operating businesses that provide information, advertising, medical information and other content on digital displays over a digital signage network in locations that are accessible to the public such as at airports, in elevators, in shopping malls and at medical facilities (hereinafter referred to as “Digital Content Providers”)

10. BroadSign is a supplier of hardware and software solutions to operators of networks of digital displays. BroadSign's platform includes an interface for managing a network of BroadSign Players associated with the digital displays, and among other things, upload desired content, book and manage advertising campaigns and monitor network health.

The BroadSign Players organize the content based on booked advertising campaigns and enable content to be played on the associated digital displays.

11. To date, at least five (5) BroadSign customers who are Digital Content Providers have been sued by T-Rex for patent infringement on one or more of the Patents-in-Suit. One of those customers, Health Media Network, LLC, was sued on May 27, 2016, in the United States District Court for the Northern District of Illinois. A copy of the Health Media Network LLC (“HMN”) complaint is annexed hereto as Exhibit 4. In that complaint, T-Rex accuses BroadSign’s customer of infringing the ’470 patent and identifies the allegedly infringing devices and systems as the defendant’s “digital health media advertising network” (Exhibit 4 at 15). The accused “digital health media advertising network” which T-Rex claims to infringe the ’470 patent is the product that BroadSign sold and delivered to defendant Health Media Network. HMN has no other platform provider for its “digital health media network.”

12. HMN has also been accused by T-Rex of infringing the ’334 patent (Exhibit 4 at 16). Again, T-Rex identifies HMN's “digital health media advertising network” provided to HMN by BroadSign as the allegedly infringing product. HMN has no other platform provider for its “digital health media network.”

13. HMN has also been accused by T-Rex of infringing the ’603 patent (Exhibit 4 at 18). Again, T-Rex identifies HMN's “digital health media advertising network” provided to HMN by BroadSign as the allegedly infringing product. HMN has no other platform provider for its “digital health media network.”

14. As a result of the T-Rex lawsuits filed against BroadSign’s customers over the past year accusing BroadSign’s products and services of infringing each of the Patents-in-Suit, there is a real, immediate and justiciable controversy between T-Rex and BroadSign concerning infringement of sufficient immediacy to warrant the issuance of a declaratory

judgment. There is a real and palpable threat of suit by T-Rex against BroadSign and/or against additional BroadSign customers arising from their use of BroadSign's products. This threat is real and not idle not only because of the suits against BroadSign's existing customers, but also because T-Rex has filed at least 43 patent infringement suits asserting one or more of these same patents in 17 separate judicial districts throughout the United States.

15. Given the lawsuits against BroadSign's customers and T-Rex's litigious business model and conduct, T-Rex's actions have placed a cloud over BroadSign and its business and have injured or are injuring BroadSign's business, creating a concrete and immediate justiciable controversy between BroadSign and T-Rex. BroadSign cannot simply stand by while its business suffers irreparable harm to await yet another filing of litigation by T-Rex at a future date. BroadSign seeks a declaratory judgment so that its business can move forward without the imminent and ever-present threat of litigation.

CAUSES OF ACTION

COUNT ONE

Declaratory Judgment of Non-Infringement of U.S. Patent No. RE39,470

16. BroadSign repeats and reasserts each of the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

17. BroadSign has not directly infringed and does not directly infringe, either literally or under the doctrine of equivalents, any valid and enforceable claim of the '470 patent.

18. BroadSign has not indirectly infringed and does not indirectly infringe any valid and enforceable claim of the '470 patent, either by inducing infringement or contributory infringement.

19. T-Rex has accused BroadSign's products of infringing at least claims 25 and 26 of the '470 patent. Claim 26 depends from claim 25.

20. BroadSign's products do not infringe claim 25 of the '470 patent, and therefore do not infringe any dependent claim of claim 26, for at least the reason that BroadSign's products do not "receiv[e] control instructions from at least one external information mediator" as required by the claim.

21. Accordingly, BroadSign seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201-02 that no valid and enforceable claim of the '470 patent is infringed by BroadSign.

COUNT TWO

Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,382,334

22. BroadSign repeats and reasserts each of the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

23. BroadSign has not directly infringed and does not directly infringe, either literally or under the doctrine of equivalents, any valid and enforceable claim of the '334 patent.

24. BroadSign has not indirectly infringed and does not indirectly infringe any valid and enforceable claim of the '334 patent, either by inducing infringement or contributory infringement.

25. T-Rex has accused BroadSign's products of infringing at least claims 22 and 32 of the '334 patent.

26. BroadSign's products do not infringe claim 22 of the '334 patent for at least the reason that BroadSign's products do not "us[e] a control center for coordinating and controlling electronic displays." Similarly, claim 32 of the '334 patent is not infringed for at least the reason that BroadSign's products do not have the claimed "computerized control center means."

27. Accordingly, BroadSign seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201-02 that no valid and enforceable claim of the '334 patent is infringed by BroadSign.

COUNT THREE

Declaratory Judgment of Non-Infringement of U.S. Patent No. 6,430,603

28. BroadSign repeats and reasserts each of the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

29. BroadSign has not directly infringed and does not directly infringe, either literally or under the doctrine of equivalents, any valid and enforceable claim of the '603 patent.

30. BroadSign has not indirectly infringed and does not indirectly infringe any valid and enforceable claim of the '603 patent, either by inducing infringement or contributory infringement.

31. T-Rex has accused BroadSign's products of infringing at least claims 42 and 43 of the '603 patent. Claims 42 and 43 depend from claim 13.

32. BroadSign's products do not infringe claim 13 of the '603 patent, and therefore do not infringe any dependent claim of claim 13, for at least the reason that BroadSign's products do not include the claimed "network interconnecting a plurality of electronic displays provided at various geographic locations."

33. Accordingly, BroadSign seeks a declaratory judgment pursuant to 28 U.S.C. §§ 2201-02 that no valid and enforceable claim of the '603 patent is infringed by BroadSign.

COUNT FOUR

Declaratory Judgment of Intervening Rights with Respect to U.S. Patent No. RE39,470

34. BroadSign repeats and reasserts each of the allegations contained in paragraphs 1 through 15 as if fully set forth herein.

35. The '470 patent is a reissue of U.S. Patent No. 6,005,534 ("the '534 patent").

36. As of January 16, 2007, when the '470 patent reissued, BroadSign was selling the product that has been accused by T-Rex of infringement in lawsuits against BroadSign's customers.

37. Each of the original claims of the '534 patent were amended during reissue.

38. The claims of the '470 patent are not substantially identical to the claims of the '534 patent as originally issued.

39. BroadSign and its customers are entitled to absolute and equitable intervening rights with respect to the '470 patent pursuant to 35 U.S.C. § 252.

40. As a result of the acts described herein, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

41. An actual and justiciable controversy exists between BroadSign and T-Rex as to whether BroadSign has absolute and/or equitable intervening rights. A judicial declaration is necessary and appropriate so that BroadSign may ascertain its rights regarding the '470 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff BroadSign respectfully requests the following relief:

A. a declaratory judgment that no valid and enforceable claim of the '470 patent is infringed by BroadSign;

B. a declaratory judgment that no valid and enforceable claim of the '334 patent is infringed by BroadSign;

C. a declaratory judgment that no valid and enforceable claim of the '603 patent is infringed by BroadSign;

D. a declaratory judgment that BroadSign has absolute and/or equitable intervening rights pursuant to 35 U.S.C. § 252 with respect to the '470 patent;

E. an order enjoining T-Rex, its officers, directors, agents, counsel, servants and employees, and successors in interest and assigns, all persons in active concert or participation with any of them, from alleging infringement or instituting an action based on infringement of the '470 patent, '334 patent, and '603 patent against BroadSign or any of BroadSign's customers or downstream users of BroadSign's products;

F. an order declaring that BroadSign is the prevailing party and that this is an exceptional case under 35 U.S.C. § 285 and awarding BroadSign its costs and attorneys' fees in connection with this action; and

G. such other and further relief as the Court deems just, reasonable and proper.

JURY TRIAL DEMANDED

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff BroadSign hereby demands a trial by jury on all issues so triable.

Dated: June 16, 2016

Respectfully submitted,

BROWN RUDNICK LLP

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