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THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X BIANCO, J. BOYLE, M.J.
DESIGNER APPLIANCES, INC.,

Plaintiff,

COMPLAINT
JURY TRIAL DEMANDED

-against-

JACK LO,

Defendant.
-----X

Plaintiff Designer Appliances, Inc. (hereinafter "DAI" or "Plaintiff"), by its undersigned attorneys, for its Complaint against defendant Jack Lo (hereinafter "Lo" or "Defendant"), hereby alleges as follows:

NATURE OF ACTION

1. This lawsuit seeks to put an end to Lo's repeated unjustified accusations and allegations that Plaintiff's computer mouse products infringe its patent, U.S. Patent Number 5,576,733 ("733 Patent"). Plaintiff is a pioneer in the mouse industry and particularly ergonomic mouse products. Lo's conduct has, and continues to, put Plaintiff under a reasonable and serious apprehension of litigation and has damaged Plaintiff's current and prospective business relations. With this lawsuit, Plaintiff seeks declaratory judgment that Plaintiff's technology does not infringe the 733 Patent, one or all the

¹ Admitted before the Southern, Eastern, and Western Districts of New York and the New Jersey Bar

claims of the 733 Patent are invalid and unenforceable, and Plaintiffs seeks damages and injunctive relief for Defendant's tortious interference with current and prospective business relations.

THE PARTIES

2. Defendant is an individual with a principal place of residence at 617 Viewridge Drive, Pacifica, CA 94044.

3. Plaintiff is a corporation organized under the laws of the State of Delaware, with its principal place of business in Mineola, NY. Plaintiff's business and mission is to develop, market and support mouse devices designed to prevent hand fatigue which can cause many ailments, such as Carpal Tunnel Syndrome and DeQuervains tendonitis.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, Title 35 of the United States Code, and the Declaratory Relief Act.

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a) and 2201(a).

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and 1400.

FACTUAL BACKGROUND

7. Upon information and belief, the 733 Patent was issued to the Defendant.

8. Notwithstanding the fact that the 733 Patent does not cover any of the technologies commercialized by the Plaintiff, Defendant has accused Plaintiff of infringing, directly or indirectly, claims of the 733 Patent.

9. On or about October 21, 2002 a letter claiming infringement of the 733 Patent was sent to Plaintiff.

10. On or about June 25, 2007, Defendant filed a lawsuit against the Plaintiff and Microsoft Corporation alleging patent infringement of one or more claims of the 733 Patent in the United States District Court for Eastern District of Texas ("Eastern District of Texas").

11. On or about July 24, 2007 Defendant withdrew its case in the Eastern District of Texas "without prejudice to refiling."

12. Plaintiff is continuing to make, use, sell or offer for sale products and services that Defendant incorrectly claims infringe the 733 Patent. Because the 733 Patent is not infringed, is unenforceable and is invalid, Plaintiff has no intention to take a license under the 733 Patent. Hence, Plaintiff is under a reasonable and serious apprehension that it will imminently be sued again by Defendant for infringement of one or more of the claims of the 733 Patent. As a result, an actual controversy exists between Plaintiff and Defendant concerning whether the 733 Patent is not infringed, is invalid and is unenforceable.

COUNT I

(Declaratory Judgment of Non-infringement)

13. Paragraphs 1 through 12 are incorporated by reference as if stated fully herein.

14. Plaintiff has not infringed any valid and enforceable claim of the 733 Patent.

15. Plaintiff seeks a declaration that the 733 Patent has not been, and is not, infringed by Plaintiff.

COUNT II

(Declaratory Judgment of Invalidity)

16. Paragraphs 1 through 15 are incorporated by reference as if stated fully herein.

17. The claims of the 733 Patent are invalid for failure to meet the requirements of the patent laws of the United States, including 35 U.S.C. §§ 102, 103 and 112. For example, the claims of the 733 Patent are invalid as being anticipated or rendered obvious by numerous prior art references, including but not limited to mouse apparatus and other handles.

18. Plaintiff seeks a declaration that the claims of the 733 Patent are invalid.

COUNT III

(Declaratory Judgment of Unenforceability)

19. Paragraphs 1 through 18 are incorporated by reference as if stated fully herein.

20. The 733 Patent is unenforceable under the doctrines of laches, waiver, estoppel, and acquiescence.

21. Plaintiff seeks a declaration that the 733 Patent is unenforceable.

COUNT IV

(Tortious interference with current and prospective business relations)

22. Paragraphs 1 through 21 are incorporated by reference as if stated fully herein.

23. Plaintiff had reasonable expectation of economic benefit or advantage with existing and prospective business relations.

24. Upon information and belief, Defendant knew of Plaintiff's relationships with current and prospective business relations including investors.

25. Upon information and belief, Defendant wrongfully and intentionally interfered with Defendant's business relations and investors including Randall Goulding of The Nutmeg Group, LLC.

26. There exists a reasonable probability that but for Defendant's wrongful interference, Plaintiff would have realized the economic benefit from its relationships with current and prospect business relations including investors.

27. Plaintiff has been and continues to be injured as a result of Defendant's conduct.

WHEREFORE, Plaintiff respectfully requests that the Court:

- A. Enter an order declaring that Plaintiff has not, and does not, infringe any valid and enforceable claim of the 733 Patent;
- B. Enter an order declaring that the claims of the 733 Patent are invalid;
- C. Enter an order declaring that the 733 Patent is unenforceable;
- D. Enter an order declaring this an exceptional case pursuant to 35 U.S.C. § 285, and awarding Plaintiff its attorney fees, costs, and expenses; and
- E. Grant to Plaintiff such other and further relief as may be just and appropriate.

Respectfully submitted,



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