

3. Estech is a Texas corporation having its principal place of business at 3701 E. Plano Parkway, Plano, Texas.

4. On information and belief, Brandywine is a Delaware corporation with its principal place of business at 1612 Mt. Pleasant Road, Villanova, Pennsylvania 19085. Brandywine has filed multiple patent cases in this District regarding the '142, '922 and '717 patents.

JURISDICTION AND VENUE

5. This declaratory judgment action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this is a civil action arising under the patent laws of the United States.

7. This Court has personal jurisdiction over Brandywine because Brandywine is a citizen of this State, and because it has consented to the jurisdiction of this Court by filing multiple complaints for patent infringement, including a number of them pertaining to the '142, '922 and/or '717 patents in suit here.

8. There is an actual and justiciable controversy between Estech and Brandywine. Specifically, Brandywine asserted in correspondence dated December 11, 2012, addressed to the Chief Executive Officer of Estech, that Estech is, and has been, infringing both directly and indirectly the '142, '922 and '717 patents. In addition, Brandywine asserted that Estech's purported infringement has caused Brandywine damages and that it will continue to suffer damages into the future. Further, Brandywine demanded that Estech take steps to resolve Estech's purported past and ongoing infringement of the '142, '922 and '717 patents. Estech disputes that its products infringe, either directly or indirectly, a valid claim of the '142, '922 or '717 patents, and also disputes that it has caused, or will cause, Brandywine to suffer any recoverable damages based on Estech's conduct. Accordingly, an immediate and substantial controversy exists in this District between Estech and Brandywine with respect to whether any Estech product infringes the '142, '922 or '717 patents.

9. Venue is proper in this District under 28 U.S.C. §§ 1391(b), (c), (d), and 1400(b).

COUNT I

(Declaratory Judgment of Non-Infringement of the '142 Patent)

10. Estech incorporates and realleges the preceding paragraphs as if set forth fully herein.

11. Brandywine claims that it is the assignee of all rights, title, and interest in the '142 patent, which is entitled "Integrated Communications Control Device for a Small Office Configured for Coupling Within a Scalable Network," and which issued on March 9, 1999. Attached as Exhibit A is a true and correct copy of the '142 patent.

12. Brandywine has asserted that Estech's products infringe the '142 patent.

13. Estech has not and does not infringe any valid claim of the '142 patent, directly or indirectly, literally or under the doctrine of equivalents.

14. An actual and justiciable controversy exists between Estech and Brandywine regarding the infringement of the '142 patent.

15. A judicial declaration of non-infringement of the '142 patent is necessary and appropriate in order to resolve this controversy.

16. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Estech is entitled to judgment from this Court that Estech does not infringe any valid claim of the '142 patent.

COUNT II

(Declaratory Judgment of Non-Infringement of the '922 Patent)

17. Estech incorporates and realleges the preceding paragraphs as if set forth fully herein.

18. Brandywine claims that it is the assignee of all rights, title, and interest in the '922 patent, which is entitled "Simultaneous Voice/Data Answering Machine," and which issued on February 17, 1998. Attached as Exhibit B is a true and correct copy of the '922 patent.

19. Brandywine has asserted that Estech's products infringe the '922 patent.

20. Estech has not and does not infringe any valid claim of the '922 patent, directly or indirectly, literally or under the doctrine of equivalents.

21. An actual and justiciable controversy exists between Estech and Brandywine regarding the infringement of the '922 patent.

22. A judicial declaration of non-infringement of the '922 patent is necessary and appropriate in order to resolve this controversy.

23. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Estech is entitled to judgment from this Court that Estech does not infringe any valid claim of the '922 patent.

COUNT III

(Declaratory Judgment of Non-Infringement of the '717 Patent)

24. Estech incorporates and realleges the preceding paragraphs as if set forth fully herein.

25. Brandywine claims that it is the assignee of all rights, title, and interest in the '717 patent, which is entitled "Simultaneous Voice/Data Answering Machine," and which issued on May 22, 2001. Attached as Exhibit C is a true and correct copy of the '717 patent.

26. Brandywine has asserted that Estech's products infringe the '717 patent.

27. Estech has not and does not infringe any valid claim of the '717 patent, directly or indirectly, literally or under the doctrine of equivalents.

28. An actual and justiciable controversy exists between Estech and Brandywine regarding the infringement of the '717 patent.

29. A judicial declaration of non-infringement of the '717 patent is necessary and appropriate in order to resolve this controversy.

30. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Estech is entitled to judgment from this Court that Estech does not infringe any valid claim of the '717 patent.

COUNT IV

(Declaratory Judgment of Invalidity of the '142 Patent)

31. Estech incorporates and realleges the preceding paragraphs as if set forth fully herein.

32. Brandywine maintains that the '142 patent is valid.

33. Estech contends that every claim of the '142 patent is invalid under Title 35 of the United States Code, including under one or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.

34. An actual and justiciable controversy exists between Estech and Brandywine regarding the validity of the '142 patent.

35. A judicial declaration of invalidity of the '142 patent is necessary and appropriate in order to resolve this controversy.

36. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Estech is entitled to judgment from this Court that the claims of the '142 patent are invalid.

COUNT V

(Declaratory Judgment of Invalidity of the '922 Patent)

37. Estech incorporates and realleges the preceding paragraphs as if set forth fully herein.

38. Brandywine maintains that the '922 patent is valid.

39. Estech contends that every claim of the '922 patent is invalid under Title 35 of the United States Code, including under one or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.

40. An actual and justiciable controversy exists between Estech and Brandywine regarding the validity of the '922 patent.

41. A judicial declaration of invalidity of the '922 patent is necessary and appropriate in order to resolve this controversy.

42. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Estech is entitled to judgment from this Court that the claims of the '922 patent are invalid.

COUNT VI

(Declaratory Judgment of Invalidity of the '717 Patent)

43. Estech incorporates and realleges the preceding paragraphs as if set forth fully herein.

44. Brandywine maintains that the '717 patent is valid.

45. Estech contends that every claim of the '717 patent is invalid under Title 35 of the United States Code, including under one or more of 35 U.S.C. §§ 101, 102, 103 and/or 112.

46. An actual and justiciable controversy exists between Estech and Brandywine regarding the validity of the '717 patent.

47. A judicial declaration of invalidity of the '717 patent is necessary and appropriate in order to resolve this controversy.

48. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*, Estech is entitled to judgment from this Court that the claims of the '717 patent are invalid.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Estech hereby demands a trial by jury of all issues so triable in this action.

PRAYER FOR RELIEF

WHEREFORE, Estech respectfully requests that this Court enter judgment in its favor as follows:

- a. declaring that Estech has not, and does not, directly infringe (whether literally or under the doctrine of equivalents) any valid claim of the '142, '922 or '717 patents;
- b. declaring that Estech has not induced, and does not induce, infringement of any valid claim of the '142, '922 or '717 patents;
- c. declaring that Estech has not contributorily infringed, and does not contributorily infringe, any valid claim of the '142, '922 or '717 patents;
- d. declaring that the claims of the '142, '922 and '717 patents are invalid;
- e. enjoining Brandywine, its assigns, and all those in privity therewith from asserting the '142, '922 or '717 patents against Estech or any of its customers or suppliers;
- f. declaring that this case is exceptional pursuant to 35 U.S.C. § 285, and awarding Estech its reasonable attorneys' fees and costs;
- g. awarding Estech its costs and reasonable expenses to the fullest extent permitted by law; and
- h. awarding Estech such other and further relief as the Court may deem just and proper.

POTTER ANDERSON & CORRON LLP

OF COUNSEL:

Jose L. Patiño
Nicola A. Pisano
Justin E. Gray
FOLEY & LARDNER LLP
3579 Valley Centre Drive
Suite 300
San Diego, CA 92130-3302
(858) 847-6700

Dated: January 10, 2013
1089457

By: /s/ Philip A. Rovner
Philip A. Rovner (#3215)
Jonathan A. Choa (#5319)
Hercules Plaza
P.O. Box 951
Wilmington, DE 19899
(302) 984-6000
provner@potteranderson.com
jchoa@potteranderson.com

*Attorneys for Plaintiff
Estech Systems, Inc.*