

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

INFOGROUP, INC.,

Plaintiff,

v.

LODSYS, LLC,

Defendant.

Civil Action No. _____

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Plaintiff Infogroup, Inc. (“Infogroup”) hereby alleges for its Complaint for Declaratory Judgment against Defendant Lodsys, LLC (“Lodsys”) as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment that Infogroup does not infringe any valid claim of United States Patent Nos. 5,999,908 (“the ‘908 patent”), 7,133,834 (“the ‘834 patent”), 7,222,078 (“the ‘078 patent”) or 7,620,565 (“the ‘565 patent”) (collectively, the “Asserted Patents”), and for a declaratory judgment that the claims of each of the Asserted patent are invalid.

2. A true and correct copy of the ‘908 patent is attached hereto as Exhibit A.

3. A true and correct copy of the ‘834 patent is attached hereto as Exhibit B.

4. A true and correct copy of the ‘078 patent is attached hereto as Exhibit C.

5. A true and correct copy of the ‘565 patent is attached hereto as Exhibit D.

THE PARTIES

6. Plaintiff Infogroup, thorough its business division Salesgenie, provides online prospecting and marketing solutions. Infogroup is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business at 1020 E. 1st Street, Papillion, Nebraska 68046.

7. On information and belief, Lodsys is a limited liability company organized and existing under the laws of the State of Texas, having a place of business at 505 East Travis Street, Suite 207, Marshall, Texas 75670.

JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, Title 35, United States Code 35 U.S.C. § 1, et seq., and under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1131, 1138(a), 2201 and 2202.

9. This action is filed to resolve an actual and justiciable controversy between the parties hereto. Lodsys' conduct towards Infogroup establishes that a real and substantial dispute exists between the parties regarding Lodsys' allegations that Infogroup's products infringe the '908 patent, the '834 patent, the '078 patent and/or the '565 patent. This dispute is both definite and concrete and admits of specific relief through a decree of a conclusive character. As set forth in succeeding paragraphs herein, there is a conflict of asserted rights among the parties and an actual controversy exists between Infogroup and Lodsys with respect to the infringement, validity and scope of the '908 patent, the '834 patent, the '078 patent and the '565 patent.

10. Upon information and belief, this Court has personal jurisdiction over Lodsys because Lodsys has purposely availed itself of the benefits and protections of the laws of this State,

including this Judicial District, in connection with its conduct in wrongfully asserting the Asserted Patents against Infogroup, and in pursuing licensing and enforcement activities regarding the Asserted Patents throughout Nebraska.

11. Venue over this action is proper pursuant to the provisions of 28 U.S.C. §§ 1391 and 1400.

ALLEGATIONS SUPPORTING DECLARATORY JUDGMENT JURISDICTION

12. Infogroup realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-11.

13. Through communications and conduct, Lodsys has threatened assertion of the '908 patent, the '834 patent, the '078 patent and/or the '565 patent against Infogroup's Salesgenie product.

14. On or about September 27, 2011, Lodsys sent a letter to Infogroup's business division, Salesgenie, alleging that Infogroup is infringing the Asserted Patents and that said infringement is demonstrated by Lodsys' attached "claims chart." The September 27, 2011 letter also offered a license to Infogroup under "the Lodsys Patents," which was defined as including the '908 patent, the '834 patent, the '078 patent and the '565 patent. A true and correct copy of the Lodsys' September 27, 2011 letter is attached hereto as Exhibit E.

FIRST CLAIM FOR RELIEF

(Declaratory Judgment of Non-infringement of the '908 patent)

15. Infogroup realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-14.

16. Based on the above-stated conduct, Infogroup is informed and believes, and on that basis avers, that Lodsys contends that Infogroup's Salesgenie products infringe one or more claims of the '908 patent.

17. Accordingly, an actual controversy exists between Infogroup and Lodsys as to whether or not Infogroup has infringed, or is infringing the '908 patent; has contributed to infringement, or is contributing to infringement of the '908 patent; and has induced infringement, or is inducing infringement of the '908 patent.

18. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Infogroup is entitled to a declaration, in the form of a judgment, that by its activities Infogroup has not infringed and is not infringing any valid and enforceable claim of the '908 patent; has not contributed to infringement and is not contributing to infringement of the '908 patent; and/or has not induced infringement and is not inducing infringement of the '908 patent. Such a determination and declaration is necessary and appropriate at this time.

SECOND CLAIM FOR RELIEF

(Declaratory Judgment of Non-infringement of the '834 patent)

19. Infogroup realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-18.

20. Based on the above-stated conduct, Infogroup is informed and believes, and on that basis avers, that Lodsys contends that Infogroup's Salesgenie products infringe one or more claims of the '834 patent.

21. Accordingly, an actual controversy exists between Infogroup and Lodsys as to whether or not Infogroup has infringed, or is infringing the '834 patent; has contributed to

infringement, or is contributing to infringement of the '834 patent; and has induced infringement, or is inducing infringement of the '834 patent.

22. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Infogroup is entitled to a declaration, in the form of a judgment, that by its activities Infogroup has not infringed and is not infringing any valid and enforceable claim of the '834 patent; has not contributed to infringement and is not contributing to infringement of the '834 patent; and/or has not induced infringement and is not inducing infringement of the '834 patent. Such a determination and declaration is necessary and appropriate at this time.

THIRD CLAIM FOR RELIEF

(Declaratory Judgment of Non-infringement of the '078 patent)

23. Infogroup realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-22.

24. Based on the above-stated conduct, Infogroup is informed and believes, and on that basis avers, that Lodsys contends that Infogroup's Salesgenie products infringe one or more claims of the '078 patent.

25. Accordingly, an actual controversy exists between Infogroup and Lodsys as to whether or not Infogroup has infringed, or is infringing the '078 patent; has contributed to infringement, or is contributing to infringement of the '078 patent; and has induced infringement, or is inducing infringement of the '078 patent.

26. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Infogroup is entitled to a declaration, in the form of a judgment, that by its activities Infogroup has not infringed and is not infringing any valid and enforceable claim of the

‘078 patent; has not contributed to infringement and is not contributing to infringement of the ‘078 patent; and/or has not induced infringement and is not inducing infringement of the ‘078 patent. Such a determination and declaration is necessary and appropriate at this time.

FOURTH CLAIM FOR RELIEF

(Declaratory Judgment of Non-infringement of the ‘565 patent)

27. Infogroup realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-26.

28. Based on the above-stated conduct, Infogroup is informed and believes, and on that basis avers, that Lodsys contends that Infogroup’s Salesgenie products infringe one or more claims of the ‘565 patent.

29. Accordingly, an actual controversy exists between Infogroup and Lodsys as to whether or not Infogroup has infringed, or is infringing the ‘565 patent; has contributed to infringement, or is contributing to infringement of the ‘565 patent; and has induced infringement, or is inducing infringement of the ‘565 patent.

30. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Infogroup is entitled to a declaration, in the form of a judgment, that by its activities Infogroup has not infringed and is not infringing any valid and enforceable claim of the ‘565 patent; has not contributed to infringement and is not contributing to infringement of the ‘565 patent; and has not induced infringement and is not inducing infringement of the ‘565 patent. Such a determination and declaration is necessary and appropriate at this time.

FIFTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the ‘908 patent)

31. Infogroup realleges and incorporates herein by reference each and every allegation

contained in paragraphs 1-30.

32. Based on the above-stated conduct, Infogroup is informed and believes, and on that basis avers, that Lodsys contends that Infogroup infringes one or more claims of the '908 patent.

33. Infogroup denies that it infringes any valid and enforceable claim of the '908 patent, and avers that the assertions of infringement cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under at least one of 35 U.S.C. §§ 101, 102, 103, and 112.

34. Accordingly, an actual controversy exists between Infogroup and Lodsys as to the validity of the '908 patent. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Infogroup is entitled to a declaration, in the form of a judgment, that the '908 patent is invalid. Such a determination and declaration is necessary and appropriate at this time.

SIXTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '834 patent)

35. Infogroup realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-34.

36. Based on the above-stated conduct, Infogroup is informed and believes, and on that basis avers, that Lodsys contends that Infogroup infringes one or more claims of the '834 patent.

37. Infogroup denies that it infringes any valid and enforceable claim of the '834 patent, and avers that the assertions of infringement cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under at least one of 35 U.S.C. §§ 101, 102, 103, and 112.

38. Accordingly, an actual controversy exists between Infogroup and Lodsyst as to the validity of the '834 patent. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Infogroup is entitled to a declaration, in the form of a judgment, that the '834 patent is invalid. Such a determination and declaration is necessary and appropriate at this time.

SEVENTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the '078 patent)

39. Infogroup realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-38.

40. Based on the above-stated conduct, Infogroup is informed and believes, and on that basis avers, that Lodsyst contends that Infogroup infringes one or more claims of the '078 patent.

41. Infogroup denies that it infringes any valid and enforceable claim of the '078 patent, and avers that the assertions of infringement cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under at least one of 35 U.S.C. §§ 101, 102, 103, and 112.

42. Accordingly, an actual controversy exists between Infogroup and Lodsyst as to the validity of the '078 patent. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Infogroup is entitled to a declaration, in the form of a judgment, that the '078 patent is invalid. Such a determination and declaration is necessary and appropriate at this time.

EIGHTH CLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of the ‘565 patent)

43. Infogroup realleges and incorporates herein by reference each and every allegation contained in paragraphs 1-42.

44. Based on the above-stated conduct, Infogroup is informed and believes, and on that basis avers, that Lodsys contends that Infogroup infringes one or more claims of the ‘565 patent.

45. Infogroup denies that it infringes any valid and enforceable claim of the ‘565 patent, and avers that the assertions of infringement cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under at least one of 35 U.S.C. §§ 101, 102, 103, and 112.

46. Accordingly, an actual controversy exists between Infogroup and Lodsys as to the validity of the ‘565 patent. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Infogroup is entitled to a declaration, in the form of a judgment, that the ‘565 patent is invalid. Such a determination and declaration is necessary and appropriate at this time.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Infogroup prays for a judgment as follows:

1. For a declaration that its products do not infringe any valid claim of the ‘908 patent;
2. For a declaration that assertions of infringement of the ‘908 patent cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

3. For a declaration that the claims of the '908 patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

4. For a declaration that its products do not infringe any valid claim of the '834 patent;

5. For a declaration that assertions of infringement of the '834 patent cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

6. For a declaration that the claims of the '834 patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

7. For a declaration that its products do not infringe any valid claim of the '078 patent;

8. For a declaration that assertions of infringement of the '078 patent cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

9. For a declaration that the claims of the '078 patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

10. For a declaration that its products do not infringe any valid claim of the '565 patent;

11. For a declaration that assertions of infringement of the '565 patent cannot be maintained consistently with statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

12. For a declaration that the claims of the '565 patent are invalid under one or more of 35 U.S.C. §§ 101, 102, 103, and 112;

13. For a preliminary and permanent injunction enjoining and restraining Lodsyst and its respective officers, partners, employees, agents, parents, subsidiaries or anyone in privity with them, and all persons acting in concert with them and each of them:

a. from making any claims to any person or entity that any product of Infogroup infringes the '908 patent, the '834 patent, the '078 patent and/or the '565 patent;

b. from interfering with, or threatening to interfere with the manufacture, sale, or use of any Infogroup's products by Infogroup, its customers, distributors, predecessors, successors or assigns; and

c. from instituting or prosecuting any lawsuit or proceeding, placing in issue the right of Infogroup, its customers, distributors, predecessors, successors or assigns, to make, use or sell products which allegedly infringe the '908 patent, the '834 patent, the '078 patent and/or the '565 patent.

14. For an award to Infogroup of its reasonable attorneys' fees and costs of suit incurred herein; and

15. For such other and further relief as the Court may deem proper.

JURY DEMAND

Plaintiff respectfully requests a trial by jury of all issues so triable in Omaha, Nebraska.

Dated February 21, 2013

Respectfully submitted,

By: /s/ John P. Passarelli

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