



**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA**

Stump Printing Co., Inc.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:17-cv-00128
)	
Electronic Communication Technologies, LLC,)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW Plaintiff, Stump Printing Co., Inc., (“Shindigz”) and files its Complaint for Declaratory Judgment against Defendant Electronic Communication Technologies, LLC (“ECT”). Shindigz seeks declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 declaring United States Patents No. 9,373,261 (the “261 Patent), 7,876,239 (the “239 Patent”), and 7,319,414 (the “414 Patent”) (collectively, the “Patents”) to be ineligible for patenting, not infringed, and invalid.

PARTIES

1. Plaintiff Shindigz is an Indiana corporation with a principal place of business located in South Whitley, Indiana.
2. Defendant ECT is a Florida limited liability company with its principal place of business located in Boynton Beach, Florida. On information and belief, ECT is a continuation and/or successor in interest of and to Eclipse IP, LLC.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Shindigz’s request for declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202. Further, this Court arises under the patent

laws of the United States, 35 U.S.C. § 100 et. seq., and this Court further has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a).

4. ECT (currently and in its prior embodiment of Eclipse IP) is a well-known non-practicing entity (“NPE”) (sometimes referred to as a “patent troll”). NPEs in general, and ECT in particular, are known for the practice of asserting patents of dubious validity against large numbers of defendants in broad fields of conduct (much of which is facially non-infringing) in fields in which the NPE engages in no commercial activity. NPEs generally, and ECT specifically, on information and belief, make a practice of calibrating the amount of their settlement demands to be lower than the perceived cost of litigation, to try to ensure that practicing entities settle rather than pursue challenges to the eligibility of validity of the patents through dispositive motions or trial.

5. ECT, for example, has filed thirty-three patent infringement lawsuits since July 5, 2016. On information and belief, ECT’s predecessor-in-interest Eclipse IP appeared in approximately two-hundred and twenty patent lawsuits since 2011.

6. ECT sent Shindigz a letter dated February 6, 2017 containing accusations that Shindigz’s website infringes the Patents. Specifically, the February 6 letter contends that Shindigz infringes claim 11 of the ‘261 Patent, claim 54 of the ‘239 Patent, and claims 23, 28, and 29 of the ‘414 Patent. The February 6 letter constitutes a threat that ECT intends to enforce the Patents against Shindigz through litigation, as ECT and its predecessor-in-interest have done more than two hundred and fifty times previously. An actual, justiciable, immediate, and real controversy exists between Shindigz and ECT exists concerning the eligibility, noninfringement, and invalidity of the Patents.

7. ECT's threats, including particularly the February 6 letter, portend actual and imminent injury to Shindigz that can be redressed by this Court. ECT's threats and demands are of sufficient immediacy and reality to warrant this Court to issue declaratory judgment. Absent a declaration of ineligibility, noninfringement, or invalidity of the Patents, ECT's continued wrongful threats, assertions, and demands will harm Shindigz. The facts alleged throughout this Complaint, under all the circumstances, show that there is a substantial controversy between Shindigz and ECT, that Shindigz and ECT's legal interests are adverse, and that this controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

8. ECT has specific contacts with the State of Indiana in relation to this lawsuit, insofar as ECT has sent threatening letters into this State and District demanding that Shindigz cease providing certain services, such services provided by Shindigz also in part in this State and District.

9. Venue in this District is proper pursuant to 28 U.S.C. § 1391, as a substantial part of the events or omissions giving rise to this Complaint occurred in South Whitley, Indiana. Venue is also proper pursuant to 28 U.S.C. § 1400(b), insofar as ECT has accused Shindigz of infringing one or more of the Patents and Shindigz has a regular and established place of business in this District.

FACTUAL BACKGROUND

10. Shindigz sells and distributes party supply goods. Shindigz's primarily channel of commerce is internet sales.

11. Shindigz runs multiple commercial point-of-sale websites. These websites utilize industry-standard order and shipping confirmation procedures. When a customer orders an item from Shindigz using the website, Shindigz emails the customer an order confirmation. The order

confirmation is generated automatically without regard to the location or status of the ordered item. Later, when the ordered item is ready to ship, a shipping confirmation email is sent. The shipping confirmation email is sent to a customer-specified email address. The shipping confirmation email contains no “authenticating information” such as code words, images, or customer-specific personal information other than name. The shipping confirmation email contains a hyperlink that leads customers to another Shindigz website, where an estimated delivery date is provided. To obtain any further particulars about the shipment, a customer is required to click a link embedded in this second Shindigz website, which will lead to third-party tracking software of the package carrier.

12. The Patents purport to claim methods for avoiding fraud in internet transactions, and particularly for avoiding the practice known as “phishing.”

13. On February 6, 2017 ECT sent a letter to Shindigz’s Chief Executive Officer Dan Haight by electronic mail. The letter alleged that Shindigz’s “Order Confirmation” and “Shipping Confirmation” online systems (in other words, the normal operation of Shindigz’s point-of-sale website) “infringe claims of the ECT Patents.” The letter provides a supposed claim chart detailing the alleged infringement of claim 11 of the ‘261 Patent, claim 54 of the ‘239 Patent, and claims 23, 28, and 29 of the ‘414 Patent. A copy of the February 6 letter is attached as Exhibit A.

14. The February 6 letter demands that Shindigz pay a “license fee” of \$30,000 to ECT. On information and belief, this supposed “license fee” is a disguised demand for compensation for Shindigz’s supposed infringement of the ECT Patents. On information and belief, ECT intends to sue Shindigz for purported infringement of the Patents unless Shindigz agrees pay a settlement amount disguised as a “license fee.”

THE ECT PATENTS

15. ECT purports to be the owner of the Patents by assignment. The ‘261 Patent is attached hereto as Exhibit B. The ‘239 Patent is attached hereto as Exhibit C. The ‘414 Patent is attached hereto as Exhibit D.

16. The Patents are each closely related to prior ECT patents that were held invalid by a United States District Court in *Eclipse IP v. McKinley Equip. Corp.*, No. 14-cv-154 (C.D. Cal., Sept. 14, 2014). Specifically, the Court for the Central District of California held invalid U.S. Patent Nos. 7,064,681 (the ‘681 Patent), 7,113,110 (the ‘110 Patent), and 7,119,716 (the ‘716 Patent) (collectively, “Invalid ECT Patents”). Each invalidated claim of the Invalid ECT Patents was found to be directed to subject matter not eligible for patenting pursuant to 35 U.S.C. § 101.

17. The ‘239 Patent is ultimately a continuation of the invalidated ‘716 patent. The ‘239 patent and ‘716 patent share the same disclosure.

18. The ‘414 Patent is ultimately a continuation of the invalidated ‘716 patent. The ‘239 patent and ‘716 patent share the same disclosure.

19. The ‘261 Patent is ultimately a continuation of the invalidated ‘716 patent, through intermediaries including, relevant part, the ‘239 and ‘414 Patents. The ‘261 patent and ‘716 patent share the same disclosure.

20. The nature of the defect in the invalidated ‘716 patent—upon which each of the Patents relies and to which each of the Patents is in all material respects identical—is that the ‘716 patent is directed to a mere abstraction, rather than to a useful composition, process, device, or other patentable subject matter.

21. Each of the '261, '239, and '414 Patents suffers the same flaw as the '716 Patent. Each asserted claim of each of the Patents is directed to a mere abstraction that is ineligible for patenting pursuant to 35 U.S.C. § 101.

COUNT I: DECLARATORY JUDGMENT OF NONINFRINGEMENT

22. Shindigz reasserts and reincorporates the foregoing paragraphs as though fully set forth herein.

23. The asserted claims of the '261 Patent have not been infringed, directly, indirectly, or equivalently, by Shindigz or the purchasers of Shindigz products by their use of Shindigz's website.

24. There exists a substantial controversy between Shindigz and ECT of sufficient immediacy and reality to warrant issuance of declaratory judgment that Shindigz and its purchasers have not and do not infringe the '261 Patent.

25. The asserted claims of the '239 Patent have not been infringed, directly, indirectly, or equivalently, by Shindigz or the purchasers of Shindigz products by their use of Shindigz's website.

26. There exists a substantial controversy between Shindigz and ECT of sufficient immediacy and reality to warrant issuance of declaratory judgment that Shindigz and its purchasers have not and do not infringe the '239 Patent.

27. The asserted claims of the '414 Patent have not been infringed, directly, indirectly, or equivalently, by Shindigz or the purchasers of Shindigz products by their use of Shindigz's website.

28. There exists a substantial controversy between Shindigz and ECT of sufficient immediacy and reality to warrant issuance of declaratory judgment that Shindigz and its purchasers have not and do not infringe the '414 Patent.

COUNT II: DECLARATORY JUDGMENT OF INVALIDITY

29. Shindigz reasserts and reincorporates the foregoing paragraphs as though fully set forth herein.

30. The asserted claims of the '261 Patent are invalid for failure to comply with the requirements of patentability as set forth in 35 U.S.C. §§ 1 et. seq., including without limitation 35 U.S.C. §§ 101, 102, 103, 112 and other judicially-created bases for invalidity, particularly to the extent that ECT asserts its claims are so broad that Shindigz's websites infringe one or more of them.

31. There exists a substantial controversy between Shindigz and ECT of sufficient immediacy and reality to warrant issuance of declaratory judgment that the '261 Patent is invalid.

32. The asserted claims of the '239 Patent are invalid for failure to comply with the requirements of patentability as set forth in 35 U.S.C. §§ 1 et. seq., including without limitation 35 U.S.C. §§ 101, 102, 103, 112 and other judicially-created bases for invalidity, particularly to the extent that ECT asserts its claims are so broad that Shindigz's websites infringe one or more of them.

33. There exists a substantial controversy between Shindigz and ECT of sufficient immediacy and reality to warrant issuance of declaratory judgment that the '239 Patent is invalid.

34. The asserted claims of the '414 Patent are invalid for failure to comply with the requirements of patentability as set forth in 35 U.S.C. §§ 1 et. seq., including without limitation 35 U.S.C. §§ 101, 102, 103, 112 and other judicially-created bases for invalidity, particularly to the extent that ECT asserts its claims are so broad that Shindigz's websites infringe one or more of them.

35. There exists a substantial controversy between Shindigz and ECT of sufficient immediacy and reality to warrant issuance of declaratory judgment that the '414 Patent is invalid.

WHEREFORE, Shindigz prays for:

- (a) A declaration that Shindigz has not infringed and is not infringing, directly, indirectly, or equivalently, any claim of the '261, '239, or '414 Patents;
- (b) A declaration that each asserted claim of the '261, '239, and '414 Patents is invalid;
- (c) An order that ECT and its parents, subsidiaries, affiliates, officers, employees, agents, attorneys, and any persons in concert or participation with the same are restrained and enjoined from prosecuting, initiating, or threatening the prosecution or initiation of any action against Shindigz or purchasers of Shindigz products based on assertion of the '261, '239, or '414 Patents;
- (d) A declaration that this case is exceptional pursuant to 35 U.S.C. § 285;
- (e) An award to Shindigz of its costs and attorneys' fees;
- (f) All other relief this Court or a jury deems just or proper under the circumstances.

JURY DEMAND

Shindigz demands a trial by jury on all issues so triable.

BARRETT McNAGNY LLP

Date: March 30, 2017

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