

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

HEWLETT-PACKARD COMPANY,
A Delaware corporation,

Plaintiff,

v.

INNOVATIVE WIRELESS SOLUTIONS, LLC
and DOES 1-10,

Defendants.

Case No. 1:13-cv-491

**COMPLAINT AND DEMAND FOR JURY
TRIAL**

COMPLAINT AND DEMAND

Plaintiff Hewlett-Packard Company (“HP”) for its complaint against Defendant Innovative Wireless Solutions, LLC (“IWS”) and DOES 1-10, inclusive, and each of them (collectively “Defendants”) alleges:

I. THE PARTIES

1. HP is a corporation organized and existing under the laws of the state of Delaware. HP’s principal place of business is 3000 Hanover Street, Palo Alto, California 94304.

2. Upon information and belief, Defendant Innovative Wireless Solutions, LLC (“IWS”) is a limited liability company organized and existing under the laws of the state of Texas, and has a principal place of business at 800 S. Austin Ave., Suite 200, Georgetown, Texas 78626-5848.

3. The correct and proper names of Defendants named herein as DOES 1-10, inclusive, and each of them, are unknown to Plaintiff, who therefore sues such “DOE” defendants by fictitious names. Upon information and belief, Plaintiff alleges that each

fictitiously named Defendant, to the extent any or all of them claim to have any rights or interest in ownership of the Patents-in-Suit, or rights to assert claims of patent infringement of the Patents-in-Suit, is properly named as an indispensable party herein. Plaintiff will amend the Complaint, as necessary, to set forth the true names and capacities of the fictitiously designated “DOE” Defendants when the same, if any, have been ascertained. For clarity, Defendant IWS is referenced throughout the remainder of this Complaint, but each allegation and claim made against IWS is similarly made against Defendants DOES 1-10, inclusive.

II. JURISDICTION

4. This action arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202, the patent laws of the United States, 35 U.S.C. § 1 et seq. An actual, substantial and continuing justiciable controversy exists between HP and IWS that requires a declaration of rights by this Court.

5. The Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), and 2201-2202.

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

7. The Court has personal jurisdiction over IWS by virtue of IWS’ purposeful and repeated contacts in this District, including, *inter alia*, (1) IWS’ principal place of business within the District at 800 S. Austin Ave., Suite 200, Georgetown, Texas 78626-5848 and (2) IWS’ designation of BlumbergExcelsior Corporate Services, Inc. within the District at 814 San Jacinto Blvd., Suite 103, Austin, Texas 78701 as its registered agent, as reflected in the records of the Secretary of State of Texas, and (3) IWS’ attempts to enforce U.S. Patent Nos. 5,912,895, 6,327,264, and 4,587,437 (“the Patents-in-Suit”) against products manufactured by HP and used by its customers within the District.

III. THE PATENTS-IN-SUIT

8. U.S. Patent No. 5,912,895 (“the ’895 patent”) is entitled “Information network access apparatus and methods for communicating information packets via telephone lines” and issued on June 15, 1999. A copy of the ’895 patent is attached hereto as Exhibit 1.

9. U.S. Patent No. 6,327,264 (“the ’264 patent”) is entitled “Information network access apparatus and methods for communicating information packets via telephone lines” and issued on December 4, 2001. A copy of the ’264 patent is attached hereto as Exhibit 2.

10. U.S. Patent No. 6,587,473 (“the ’473 patent”) is entitled “Information network access apparatus and methods for communicating information packets via telephone lines” and issued on May July 1, 2003. A copy of the ’473 patent is attached hereto as Exhibit 3.

IV. FACTUAL BACKGROUND

11. On April 24, 2013, IWS filed forty-one complaints alleging patent infringement of the Patents-in-Suit in the Eastern District of Texas, Marshall Division, in Civil Action Nos. 2:13-cv-00299 through 2:13-cv-00323, 2:13-cv-00325 through 2:13-cv-00328, and 2:13-cv-00334 through 2:13-cv-00345 (collective the “Original IWS actions”). In the Original IWS actions, IWS accused the defendants of infringing the Patents-in-Suit by “making, using, offering to sell, and selling the use of an IEEE 802.11 wireless network that includes a wireless access point (‘WAP’) connected to an Ethernet network.” Several of the defendants in the Original IWS actions use wireless access points manufactured by HP and sought indemnification from HP.

12. On June 7, 2013, IWS filed motions for voluntary dismissal without prejudice in all forty-one Original IWS actions, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). The Court dismissed without prejudice all forty-one Original IWS actions on June 7, 2013, and said dismissals were entered on June 10, 2013.

13. IWS has sent letters to other HP customers (“Accused HP Customers”) in which it asserted that the Patents-in-Suit were infringed by the HP customers’ use of HP wireless access points in wireless local area networks. For example, IWS alleged in these letters that HP’s customers are “infringing one or more claims of each of the IWS Patents by making, using, offering to sell, and selling the use of an IEEE 802.11 wireless network (commonly referred to as a ‘WiFi network’) that includes a wireless access point connected to an Ethernet network (collectively ‘wireless Internet access’ and/or ‘the infringing services and products’).” Moreover, IWS alleged in the letters to HP’s customers that “[i]n addition to directly infringing the IWS Patents, your company is also inducing others to infringe the IWS Patents by offering wireless Internet access, advertising that wireless Internet access, and encouraging others to use that wireless Internet access.” IWS further asserted that “[a]dditionally, your company’s provision of wireless Internet access to these guests, customers, and end users contributes to the infringement of the IWS Patents by those entities because your wireless network constitutes a material part of the invention, was especially made or especially adapted for use in an infringement of the IWS Patents, and has no substantial non-infringing uses.” These Accused HP Customers have sought indemnification from HP.

14. HP manufactures, offers for sale, and sells wireless access points that are the subject of the Original IWS actions, as well as being accused in the letters to Accused HP Customers.

15. On information and belief, accused HP products are licensed to the Patents-in-Suit. Northern Telecom Limited, the original assignee of the ’895 patent, granted a license to HP, effective January 1, 1994, to make, have made, use, sell, offer for sale, and import products covered by the Patents-in-Suit. To the extent that IWS’ allegations of patent infringement are predicated on the alleged making, use, sale, offer for sale, or importation of HP products, such allegations are barred pursuant to such license and/or the doctrine of patent exhaustion.

16. HP, its wireless access point products, and HP's customers have not infringed, and do not infringe, directly or indirectly, any valid and enforceable claim of any of the Patents-in-Suit, either literally or under the doctrine of equivalents. There exists an actual and justiciable controversy between HP and IWS that warrants declaratory relief.

COUNT I

NONINFRINGEMENT OF U.S. PATENT 5,912,895

17. HP incorporates by reference the allegations in paragraphs 1 through 16, inclusive.

18. This is an action for declaratory judgment of non-infringement of any and all valid claims of the '895 patent.

19. HP has an objectively reasonable apprehension that IWS will bring a patent infringement action against HP and/or HP's customers.

20. IWS has alleged that it "is the assignee and owner of the right, title and interest in and to" the '895 patent, "including the right to assert all causes of action arising under said patents and the right to any remedies for infringement."

21. IWS has alleged and continues to allege that HP's customers have directly infringed the '895 patent.

22. HP denies IWS' allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '895 patent.

23. Accordingly, there exists an actual and justiciable controversy between HP and IWS relating to whether the claims of the '895 are infringed by HP or HP's customers.

24. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding non-infringement of the '895 patent.

COUNT II

INVALIDITY OF U.S. PATENT NO. 5,912,895

25. HP incorporates by reference the allegations of paragraphs 1 through 24, inclusive.

26. This is an action for declaratory judgment of invalidity of any and all claims of the '895 patent.

27. HP has an objectively reasonable apprehension that IWS will bring a patent infringement action against HP and/or HP's customers.

28. The claims of the '895 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 et seq., including but not limited to 35 U.S.C. §§ 102, 103, and 112.

29. Accordingly, there exists an actual and justiciable controversy between HP and IWS relating to whether the claims of the '895 are invalid.

30. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '895 patent.

COUNT III

NONINFRINGEMENT OF U.S. PATENT 6,327,264

31. HP incorporates by reference the allegations in paragraphs 1 through 30, inclusive.

32. This is an action for declaratory judgment of non-infringement of any and all valid claims of the '264 patent.

33. HP has an objectively reasonable apprehension that IWS will bring a patent infringement action against HP and/or HP's customers.

34. IWS has alleged that it "is the assignee and owner of the right, title and interest in and to" the '264 patent, "including the right to assert all causes of action arising under said patents and the right to any remedies for infringement."

35. IWS has alleged and continues to allege that HP's customers have directly infringed the '264 patent.

36. HP denies IWS' allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '264 patent.

37. Accordingly, there exists an actual and justiciable controversy between HP and IWS relating to whether the claims of the '264 are infringed by HP or HP's customers.

38. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding non-infringement of the '264 patent.

COUNT IV

INVALIDITY OF U.S. PATENT NO. 6,327,264

39. HP incorporates by reference the allegations of paragraphs 1 through 38, inclusive.

40. This is an action for declaratory judgment of invalidity of any and all claims of the '264 patent.

41. HP has an objectively reasonable apprehension that IWS will bring a patent infringement action against HP and/or HP's customers.

42. The claims of the '264 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 et seq., including but not limited to 35 U.S.C. §§ 102, 103, and 112.

43. Accordingly, there exists an actual and justiciable controversy between HP and IWS relating to whether the claims of the '264 are invalid.

44. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '264 patent.

COUNT V

NONINFRINGEMENT OF U.S. PATENT 6,587,473

45. HP incorporates by reference the allegations in paragraphs 1 through 44, inclusive.

46. This is an action for declaratory judgment of non-infringement of any and all valid claims of the '473 patent.

47. HP has an objectively reasonable apprehension that IWS will bring a patent infringement action against HP and/or HP's customers.

48. IWS has alleged that it "is the assignee and owner of the right, title and interest in and to" the '473 patent, "including the right to assert all causes of action arising under said patents and the right to any remedies for infringement."

49. IWS has alleged and continues to allege that HP's customers have directly infringed the '473 patent.

50. HP denies IWS' allegations with respect to infringement by HP's customers. Neither HP nor its customers directly infringe, either literally or under the doctrine of equivalents, or induce or contribute to the infringement of, any valid claim of the '473 patent.

51. Accordingly, there exists an actual and justiciable controversy between HP and IWS relating to whether the claims of the '473 are infringed by HP or HP's customers.

52. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding non-infringement of the '473 patent.

COUNT VI

INVALIDITY OF U.S. PATENT NO. 6,587,473

53. HP incorporates by reference the allegations of paragraphs 1 through 52, inclusive.

54. This is an action for declaratory judgment of invalidity of any and all claims of the '473 patent.

55. HP has an objectively reasonable apprehension that IWS will bring a patent infringement action against HP and/or HP's customers.

56. The claims of the '473 patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 1 et seq., including but not limited to 35 U.S.C. §§ 102, 103, and 112.

57. Accordingly, there exists an actual and justiciable controversy between HP and IWS relating to whether the claims of the '473 are invalid.

58. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding the invalidity of the '473 patent.

COUNT VII

LICENSE

59. HP incorporates by reference the allegations of paragraphs 1 through 58, inclusive.

60. This is an action for declaratory judgment that to the extent that any of IWS' allegations of patent infringement are predicated on the alleged making, use, sale, offer for sale, or importation of licensed products by HP or HP's customers, such allegations are barred pursuant to the license(s).

61. HP has an objectively reasonable apprehension that IWS will bring a patent infringement action against HP and/or HP's customers.

62. Accordingly, there exists an actual and justiciable controversy between HP and IWS relating to whether the claims of the Patents-in-Suit are licensed.

63. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their respective rights and responsibilities regarding whether the claims of the Patents-in-Suit are licensed.

COUNT VIII
PATENT EXHAUSTION

64. HP incorporates by reference the allegations of paragraphs 1 through 63, inclusive.

65. This is an action for declaratory judgment that to the extent that any of IWS' allegations of patent infringement are predicated on the alleged making, use, sale, offer for sale, or importation of licensed products by HP or HP's customers, such allegations are barred pursuant to the doctrine of patent exhaustion.

66. HP has an objectively reasonable apprehension that IWS will bring a patent infringement action against HP and/or HP's customers.

67. Accordingly, there exists an actual and justiciable controversy between HP and IWS relating to whether the claims of the Patents-in-Suit are exhausted.

68. HP desires and requests a judicial determination and declaration of the respective rights and duties of the parties based on the disputes recited herein. Such a determination and declaration is necessary and appropriate at this time so that the parties may ascertain their

respective rights and responsibilities regarding whether the claims of the Patents-in-Suit are exhausted.

PRAYER FOR RELIEF

WHEREFORE, HP prays for the following relief:

- A. A declaration that HP and its customers have not infringed and do not infringe in any manner any valid and enforceable claim of any of the Patents-in-Suit;
- B. A declaration that each claim of the Patents-in-Suit is invalid;
- C. A declaration that IWS' allegations are barred by license and/or patent exhaustion;
- D. A permanent injunction prohibiting further or future enforcement of the Patents-in-Suit against HP, its suppliers, manufacturers, distributors, resellers, customers, or end-users of its products;
- E. A judgment deeming this to be an "exceptional" case with the meaning of 35 U.S.C. § 285, entitling HP to an award of its reasonable attorneys' fees, expenses, and costs in this action; and
- F. For such other and further relief, in law or in equity, as this Court deems just.

JURY TRIAL DEMANDED

HP demands a trial by jury as to all issues and causes of action so triable herein, pursuant to Federal Rule of Civil Procedure 38.

Dated: June 12, 2013

BRACEWELL & GIULIANI LLP

By: */s/ Barry K. Shelton*

Barry K. Shelton

State Bar No. 24055029

Email: barry.shelton@bglp.com

Alan D Albright

State Bar No. 00973650

Email: alan.albright@bglp.com

111 Congress Avenue, Suite 2300

Austin, Texas 78701

(512) 472-7800

(512) 472-9123 Fax

Attorneys for Plaintiff

HEWLETT-PACKARD COMPANY