

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

PROGRESSIVE CASUALTY INSURANCE
COMPANY,

Plaintiff,

v.

HTI, IP, LLC,

Defendant.

Case No.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Progressive Casualty Insurance Company (“Progressive”), by and through its attorneys, for its complaint for declaratory judgment against Defendant HTI, IP, LLC (“HTI”) alleges the following:

NATURE OF THE ACTION

1. In this action, brought pursuant to 28 U.S.C. § 2201 *et seq.*, Progressive seeks a declaratory judgment that certain patents allegedly owned by Defendant are invalid and therefore unenforceable under the patent laws of the United States, Title 35 of the United States Code. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338 and 2201 with respect to an actual controversy arising under Title 35 of the United States Code.

2. On information and belief, HTI claims rights under U.S. Patent Nos. 6,594,579 (the “’579 Patent”), 6,636,790 (the “’790 Patent”), and 6,732,031 (the “’031 Patent”) (collectively the “HTI Patents” or the “patents-in-suit”) and has asserted those rights against products that are offered for sale to Progressive and/or its customers. True and correct copies of the ’579 Patent,

the '790 Patent, and the '031 Patent are attached hereto as Exhibits A, B, and C, respectively.

Progressive seeks a declaration that one or more of the claims of each of these patents is invalid.

PARTIES

3. Progressive is a corporation organized under the laws of the state of Ohio, with its principal place of business at 6300 Wilson Mills Road, Mayfield Village, Ohio 44143.

4. HTI is a limited liability company organized under the laws of the state of Delaware, with its principal place of business at 41 Perimeter Center East, Suite 400, Atlanta, Georgia 30346.

JURISDICTION AND VENUE

5. This action arises under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202 and the Patent Laws of the United States, Title 35 of the United States Code.

6. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

7. On information and belief, HTI is subject to the Court's specific and general personal jurisdiction, pursuant to due process and/or the Ohio long arm statute, due to at least its substantial business in this forum, including at least the following activities: (a) HTI has asserted its patent rights against products being used by Progressive or its customers in this District; (b) HTI acquired the patents-in-suit from Reynolds and Reynolds Holdings, Inc. ("Reynolds and Reynolds"), a company located in this state; (c) at least one of HTI's licensees, NetworkFleet, Inc. ("NetworkFleet"), on information and belief, is an entity related to HTI and is a foreign corporation registered to do business in the state of Ohio, which is licensed by HTI to practice the claimed inventions in this District, and has with customers in this state; and (d) as a result of

these activities, HTI has obtained substantial benefits and revenue from activities in this District. Further, on information and belief, HTI is subject to the Court's general jurisdiction, as a result of its own actions, or the actions of its agents or licensees, of regularly doing business or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to persons or entities in Ohio.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) because a substantial part of the events giving rise to Progressive's claim occurred in this District and the defendant is subject to personal jurisdiction in this District.

FACTUAL BACKGROUND

9. Progressive and its related companies and agents offer and sell a variety of property and casualty insurance products and engage in related services, including administration and adjustment of insurance claims, directly to consumers and through independent insurance agents. Among other things, Progressive offers usage-based automotive insurance policies to its customers in this District. Progressive's usage-based insurance policies provide an incentive to encourage safe driving and reduce the overall amount of driving, thereby improving road safety and reducing the number of accidents and associated claim costs, as well as reducing carbon emissions, oil consumption, and road maintenance.

10. The '579 Patent is entitled "Internet-Based Method for Determining a Vehicle's Fuel Efficiency." The patent on its face states that it issued on July 15, 2003.

11. On information and belief, the '579 Patent was acquired by HTI from Ohio-based Reynolds and Reynolds, on or about August 1, 2006.

12. The '790 Patent is entitled "Wireless Diagnostic System and Method for Monitoring Vehicles." The patent on its face states that it issued on October 21, 2003.

13. On information and belief, the '790 Patent was acquired by HTI from Reynolds and Reynolds on or about August 1, 2006.

14. The '031 Patent is entitled "Wireless Diagnostic System for Vehicles." The patent on its face states that it issued on May 4, 2004.

15. On information and belief, the '031 Patent was acquired by HTI from Reynolds and Reynolds on or about August 1, 2006.

16. On August 18, 2009, HTI sued Xirgo Technologies, LLC ("Xirgo") and others for patent infringement, alleging, among other things, that certain vehicle monitoring products sold or offered for sale by Xirgo, infringe one or more claims of each of the HTI Patents.

17. Xirgo supplies vehicle monitoring products to a variety of customers, including Progressive and/or Progressive's customers.

18. Certain of Xirgo's vehicle monitoring products can be used in connection with Progressive's usage-based insurance policy program and have been used by Progressive and/or its customers in this District.

19. The lawsuit brought by HTI against Xirgo's products has created a cloud over the Progressive's usage-based insurance policy program. In order to remove the uncertainty created by HTI's claims of infringement, in-house counsel for Progressive contacted HTI's in-house counsel to determine whether the products being supplied by Xirgo to Progressive and/or its customers were the target of the lawsuit and whether HTI was claiming that Progressive or its customers were engaging in any acts of infringement. HTI refused to provide any assurances that Progressive and its customers were not the target of any infringement claims, and the progress of the HTI litigation has failed to remove any doubt on this issue.

20. More recently, on or about July 2, 2010, HTI served infringement contentions on Xirgo, alleging that at least two of Xirgo's vehicle monitoring products infringe certain asserted claims of the patents-in-suit. On information and belief, Xirgo supplies one or both of these products to Progressive and/or its customers for use in connection with Progressive's usage-based insurance policy program.

21. Progressive contends that it does not make, use, sell or offer for sale any device or practice any method that infringes any valid and asserted claim of the patents-in-suit.

22. Accordingly, a real, immediate, and justifiable controversy exists between Progressive and HTI with respect to the patents-in-suit, making a declaration of rights as between the parties necessary.

FIRST CAUSE OF ACTION
(Declaratory Judgment of Invalidity)

23. Progressive hereby incorporates by reference each of the preceding allegations of paragraphs 1-22 above as through expressly stated herein.

24. Progressive contends that one or more claims of the '579 Patent is invalid for failing to comply with the conditions and requirements for patentability set forth in the United States Patent Laws, Title 35 U.S.C., including specifically §§ 102, 103, and/or 112, and the rules, regulations, and laws pertaining thereto.

25. By way of example, and without limiting the allegations of this complaint, Progressive contends that at least U.S. Patent No. 5,928,291 to Jenkins, *et al.* (the "'291 Patent") anticipates at least claims 1, 32, and 37-38 of the '579 Patent, and at least the combination of the U.S. Patent Nos. 5,928,291; 6,529,723; 4,845,630; 4,212,195; 5,497,329; 5,654,501; 5,355,855;

5,693,876; 5,811,884; 4,706,083; 6,879,962; 6,505,106; and/or 5,017,916 renders claims 1-38 obvious.

26. Progressive is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring one or more of the claims of the '579 Patent invalid.

SECOND CAUSE OF ACTION
(Declaratory Judgment of Invalidity)

27. Progressive hereby incorporates by reference each of the preceding allegations of paragraphs 1-22 above as through expressly stated herein.

28. Progressive contends that one or more claims of the '790 Patent is invalid for failing to comply with the conditions and requirements for patentability set forth in the United States Patent Laws, Title 35 U.S.C., including specifically §§ 102, 103, and/or 112, and the rules regulations, and laws pertaining thereto.

29. By way of example, and without limiting the allegations of this complaint, Progressive contends that at least U.S. Patent No. 5,797,134 (assigned to Progressive) anticipates at least claims 1-8, 12, and 28-30 of the '790 Patent, U.S. Patent No. 5,815,071 to Doyle anticipates claims 1-5, 13, 14, 16, 19-21, and 27-34 of the '790 Patent, and U.S. Patent No. 6,529,723 to Bentley anticipates claims 1-4, 13-16, 19-20, 22-30, and 36 of the '790 Patent. Progressive further contends that at least U.S. Patent No. 6,529,723 to Bentley in combination with U.S. Patent No. 6,295,492 to Lang *et al.* renders at least claims 6-10, 12, 15 and 22-24 obvious.

30. Progressive is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring one or more of the claims of the '790 Patent invalid.

THIRD CAUSE OF ACTION
(Declaratory Judgment of Invalidity)

31. Progressive hereby incorporates by reference each of the preceding allegations of paragraphs 1-22 above as through expressly stated herein.

32. Progressive contends that one or more claims of the '031 Patent is invalid for failing to comply with the conditions and requirements for patentability set forth in the United States Patent Laws, Title 35 U.S.C., including specifically §§ 102, 103, and/or 112, and the rules regulations, and laws pertaining thereto.

33. By way of example, and without limiting the allegations of this complaint, Progressive contends that at least U.S. Patent No. 5,797,134 (assigned to Progressive) anticipates at least claims 1-5, 7-11, 14-16, 18-20, and 22-24 of the '031 Patent, and U.S. Patent No. 5,815,071 to Doyle anticipates at least claims 1-8, 14-16, 18-19, 24, 25, 30, 51, 59, 80, and 85 of the '031 Patent. Progressive further contends that at least U.S. Patent No. 6,529,723 in combination with at least U.S. Patent Nos. 5,797,134 (assigned to Progressive); 6,879,962; 6,505,106; 6,295,492; 6,236,933; 5,844,473; 5,928,291; 5,445,347; the "*Automatic Vehicle Location for Public Safety Dispatch*" Trimble brochure, and/or the "*Incorporation of Wireless Communications into Vehicle On-Board Diagnostic (OBD) Systems*" prepared by Frank Di Genova, *et al.*, renders at least claims 1, 9, 10, 11, 14, 20, 22-25, 27, 28, 32-34, 36, 37, 39, 44-47, 50-57, 59, 61-63, 66, 67, 69, 72-75, 78, 80, 82, 83, 85, 87-92, 94-96, 99-102, 106-110, 112-114, 26, 81, 29, 31, 40, 68, 42, 65, 70, 86, 97, 105, 48, 76, 103, 104, 58, 60, 111, and/or 84 of the '031 Patent, obvious.

34. Progressive is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring one or more of the claims of the '031 Patent invalid.

PRAYER FOR RELIEF

WHEREFORE, Progressive prays for a declaratory judgment against HTI:

1. Declaring that the claims of U.S. Patent Nos. 6,594,579; 6,636,790; and 6,732,031 are invalid;
2. Finding that this case is exceptional within the meaning of 35 U.S.C. § 285, and awarding to Progressive its reasonable attorneys' fees, expenses and costs incurred in this action; and
3. Granting such other and further relief to Progressive as the Court may deem just and proper.

Date: September 15, 2010

Respectfully submitted,

By: /s/ James R. Wooley

James R. Wooley (Ohio Bar No.0033850)

jrwooley@jonesday.com

Calvin P. Griffith (Ohio Bar No.0039484)

cpgriffith@jonesday.com

Christopher J. Higgins (Ohio Bar No.0084196)

cjhiggins@jonesday.com

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, Ohio 44114

Telephone: (216) 586-3939

Facsimile: (216) 579-0212

OF COUNSEL:

Laura Beth Miller

lmiller@usebrinks.com

David P. Lindner

dlindner@usebrinks.com

BRINKS HOFER GILSON & LIONE

NBC Tower – Suite 3600

455 N. Cityfront Plaza Dr.

Chicago, Illinois 60611

Telephone: (312) 321-4200

Facsimile: (312) 321-4299

Attorneys for Plaintiff

Progressive Casualty Insurance Company