

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GEOTAG, INC.

§

§

vs.

§

C.A. NO. 2:10-CV-572-TJW

§

STARBUCKS CORP., ET AL

§

**DELI MANAGEMENT, INC., D/B/A JASON'S DELI'S
ANSWER TO COMPLAINT AND COUNTERCLAIMS**

Deli Management, Inc., d/b/a Jason's Deli (öJason'sö) submits its Answer and Counterclaims to the Complaint filed by GEOTAG, Inc. (öGEOTAGö), and states as follows:

THE PARTIES

1-19. Jason's lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 1-19 of GEOTAG's Complaint and, therefore, denies the same.

20. Jason's admits it has a place of business in Dallas, Texas.

21-50. Jason's lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 21-50 of GEOTAG's Complaint and, therefore, denies the same.

JURISDICTION AND VENUE

51. Jason's admits this is a case alleging patent infringement and that the Court has subject matter jurisdiction, but denies it has committed any acts of infringement.

52. Jasonø admits that venue and jurisdiction are proper, at least with respect to Jasonø, in this Court for this case, but denies it has committed any acts of infringement. Jasonø denies that venue in the Marshall Division is convenient.

53. Jasonø admits that venue is proper, at least with respect to Jasonø. Jasonø denies that venue in the Marshall Division is convenient.

COUNT I

INFRINGEMENT OF U.S. PATENT NO. 5,930,474

54. Jasonø denies that the 5,930,474 patent (õthe -474 patentö) was issued on July 29, 1999. Jasonø denies the remaining allegations in Paragraph 54.

55. Jasonø lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55 of GEOTAGø Complaint and, therefore, denies the same.

56. Jasonø denies the allegations in Paragraph 56 of the Complaint.

57. Jasonø denies the allegations in Paragraph 57 of the Complaint.

58-69. Jasonø lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 58-69 of GEOTAGø Complaint and, therefore, denies the same.

70. Jasonø denies the allegations in Paragraph 70 of the Complaint.

71-88. Jasonø lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraphs 71-88 of GEOTAGø Complaint and, therefore, denies the same.

89. Jasonø denies the allegations in Paragraph 89 as they relate to Jasonø.

90. Jasonø denies the allegations in Paragraph 90 as they relate to Jasonø.

PRAYER FOR RELIEF

91. Jasonø denies that GEOTAG is entitled to any of the relief sought in its prayer for relief. GEOTAGø prayer should be denied in its entirety and with prejudice, and GEOTAG should take nothing.

DEMAND FOR JURY TRIAL

92. Jasonø also demands a jury trial on all issues so triable.

AFFIRMATIVE DEFENSES

Further answering GEOTAGø Complaint, Jasonø hereby states its affirmative defenses pursuant to Fed. R. Civ. P. 8(c), as follows:

FIRST AFFIRMATIVE DEFENSE

(Non-Infringement)

93. Jasonø is not infringing, and has not infringed, directly, by inducement, contributorily, or in any way, either literally or under the doctrine of equivalents, any valid and asserted claims of the -474 patent.

SECOND AFFIRMATIVE DEFENSE

(Invalidity)

94. The claims of the -474 patent, as asserted by GEOTAG, are invalid because they fail to comply with the requirements of 35 U.S.C. § 101 *et seq.*, including, without limitation, Sections 101, 102, 103 and/or 112.

THIRD AFFIRMATIVE DEFENSE

(Equitable Defenses)

95. GEOTAGø claims are barred, in whole or in part, by the equitable doctrines of laches, unclean hands, estoppel and waiver.

FOURTH AFFIRMATIVE DEFENSE

(Prosecution History Estoppel and/or Disclaimer)

96. GEOTAG's allegations are barred by the doctrines of Prosecution History Estoppel and/or Disclaimer and waiver from asserting the claims of the -474 patent.

FIFTH AFFIRMATIVE DEFENSE

(Statutory Damages Limitation)

97. GEOTAG's claims for damages are statutorily limited or barred by 35 U.S.C. §§ 286 and/or 287.

SIXTH AFFIRMATIVE DEFENSE

(Injunctive Relief Unavailable)

98. GEOTAG's claims for injunctive relief are barred because there exists an adequate remedy at law and GEOTAG's claims otherwise fail to meet the statutory requirements for such relief.

SEVENTH AFFIRMATIVE DEFENSE

(Improper Joinder)

99. Some or all of the Defendants have been improperly joined in a single action, and Jason asserts its right to a separate trial.

EIGHTH AFFIRMATIVE DEFENSE

(Lack of Standing)

100. GEOTAG's claims are barred due to lack of standing and/or lack of ownership to the extent GEOTAG's allegations extend beyond the patent rights owned by GEOTAG.

JASON'S COUNTERCLAIMS AGAINST GEOTAG

As for its counterclaims against GEOTAG, Jasonø complains as follows:

101. Jasonø is a Texas corporation with a principal place of business at 2400 Broadway Street, Beaumont, Texas 77701.

102. On information and belief (and according to Paragraph 1 of GEOTAGø Complaint), GEOTAG is a Delaware corporation with a place of business in Plano, Texas.

103. This is a claim for declaratory judgment arising under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201 and 2202.

104. GEOTAG is subject to personal jurisdiction in this judicial district, at least because it has availed itself of the benefit of the Court for the present action.

105. Venue for this counterclaim is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b).

COUNT I

(For Declaratory Judgment of Non-Infringement)

106. Jasonø repeats and realleges the allegations of the preceding paragraphs in this counterclaim as if fully set forth herein.

107. Contrary to GEOTAGø allegations, Jasonø is not infringing, and has not infringed, directly, by inducement, contributorily, or in any way, either literally or under the doctrine of equivalents, any valid and asserted claims of the -474 patent.

108. To resolve the legal and factual questions raised by GEOTAG, and to afford relief from the uncertainty and controversy that GEOTAGø accusations have

precipitated, Jason~~ø~~ is entitled to a declaratory judgment that it does not infringe any claim of the -474 patent.

COUNT II

(For Declaratory Judgment of Invalidity)

109. Jason~~ø~~ repeats and realleges the allegations of the preceding paragraphs in this counterclaim as if fully set forth herein.

110. Contrary to GEOTAG~~ø~~'s allegations, the claims of the -474 patent are invalid under one or more sections of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112.

111. To resolve the legal and factual questions raised by GEOTAG, and to afford relief from the uncertainty and controversy that GEOTAG~~ø~~'s accusations have precipitated, Jason~~ø~~ is entitled to a declaratory judgment that the claims of the -474 patent are invalid.

JASON'S PRAYER FOR RELIEF

Jason~~ø~~ respectfully requests that this Court enter judgment in its favor and grant the following relief:

- (a) A declaration that Jason~~ø~~ does not infringe any claim of the -474 patent;
- (b) A declaration that the claims of the -474 patent are invalid;
- (c) Dismissal of all of GEOTAG~~ø~~'s claims in their entirety with prejudice;
- (d) A declaration that GEOTAG take nothing by way of its Complaint;
- (e) An order awarding Jason~~ø~~ its costs;
- (f) An order finding that this is an exceptional case and awarding Jason~~ø~~ its reasonable attorney fees pursuant to 35 U.S.C. § 285; and

(g) An order awarding such additional relief as the Court may deem appropriate and just under the circumstances.

Dated: March 10, 2011

Respectfully submitted,

By: /s/ J. Thad Heartfield

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COUNSEL FOR DEFENDANT,

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d/b/a JASON'S DELI

CERTIFICATE OF SERVICE

The undersigned certifies that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this the 10th day of March, 2011. Any other counsel of record will be served by first class mail.

/s/ J. Thad Heartfield
J. Thad Heartfield