

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

21 srl,

Plaintiff,

v.

CDW CORPORATION, OFFICEMAX
INCORPORATED and WALGREEN CO.,

Defendants.

Civil Action No. 1:08cv7350

Judge Gottschall
Magistrate-Judge Cox

PLAINTIFF'S RESPONSE TO CDW'S COUNTERCLAIM

Plaintiff 21 srl ("21 srl") responds to the Counterclaim contained in the Answer, Defenses and Counterclaim filed on February 18, 2009 by Defendant CDW Corporation ("CDW") as follows.

COUNTERCLAIM

1. For its counterclaim against Counter-Defendant 21 srl ("21 srl"), Counter-Plaintiff CDW Corporation ("CDW") states as follows:

Response:

Admitted that CDW asserts a counterclaim against Plaintiff, but denied that it is entitled to any such relief. Except as answered, the allegations are denied.

2. This is an action for declaratory judgment arising under the United States Patent laws, 35 U.S.C. §§ 1-376, and the declaratory judgment statute, 28 U.S.C. § 2201.

Response:

Admitted that CDW asserts a counterclaim for declaratory judgment against Plaintiff, but denied that it is entitled to any such relief. Except as answered, the allegations are denied.

3. CDW is an Illinois corporation with a principal place of business at 200 N. Milwaukee Avenue, Vernon Hills, IL 60061.

Response:

Admitted.

4. Counter-Defendant 21 srl alleges in this action to be an Italian corporation that has a principal place of business at Via De Canis 3, 1-14100 Asti (AT) Italy.

Response:

Admitted, except that the postal code is I-14100.

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338 and 2201.

Response:

Admitted.

6. This Court has personal jurisdiction over 21 srl, and venue is proper in this district under 28 U.S.C. § 1391, if for no other reason than 21 srl has consented and submitted thereto by filing the underlying action.

Response:

Admitted.

**COUNT I
DECLARATORY JUDGMENT OF NON-INFRINGEMENT
REGARDING U.S. PATENT NO. 7,340,451**

7. CDW repeats and realleges Paragraphs 1-6 of this counterclaim, inclusive, as though fully set forth herein and incorporates them by reference.

Response:

21 srl repeats and realleges its responses to paragraphs 1-6 of this counterclaim, inclusive, as though fully set forth herein and incorporates them by reference.

8. 21 srl alleges in this action that CDW infringes one or more claims of the '451 patent.

Response:

Admitted.

9. CDW denies infringement of any claim of the '451 patent.

Response:

Admitted that CDW asserts claims of noninfringement, but denied that it is entitled to any such relief. Except as answered, the allegations are denied.

10. There is, therefore, an actual case and controversy between the parties with respect to infringement of the '451 patent.

Response:

Admitted.

11. CDW does not infringe any of the claims of the '451 patent.

Response:

Denied.

**COUNT II
DECLARATORY JUDGMENT OF PATENT INVALIDITY
REGARDING U.S. PATENT NO. 7,340,451**

12. CDW repeats and realleges Paragraphs 1-6 of this counterclaim, inclusive, as though fully set forth herein and incorporates them by reference.

Response:

21 srl repeats and realleges its responses to paragraphs 1-6 of this counterclaim, inclusive, as though fully set forth herein and incorporates them by reference.

13. 21 srl alleges in this action that CDW infringes one or more claims of the '451 patent.

Response:

Admitted.

14. CDW denies infringement and further contends that each of the asserted claims of the '451 patent is invalid pursuant to Title 35 of the United States Code.

Response:

Admitted that CDW asserts claims of noninfringement and invalidity, but denied that it is entitled to any such relief. Except as answered, the allegations are denied.

15. There is, therefore, an actual case and controversy between the parties with respect to the validity of the claims of the '451 patent.

Response:

Admitted.

16. Each of the claims of the '451 patent is invalid for failure to satisfy one or more provisions of Title 35 of the United States Code, including, but not limited to, sections 102, 103 and 112.

Response:

Denied.

PLAINTIFF'S AFFIRMATIVE DEFENSES

21 srl asserts the following Affirmative Defenses against CDW's Counterclaim and reserves the right to further amend its responses as additional information becomes available.

1. The claims of United States Patent No. 7,340,451 are valid, enforceable and infringed by CDW.

2. CDW has infringed and continues to infringe the '451 patent by knowingly and actively inducing others to infringe through the use of the cdw.com website and by actively and knowingly aiding and abetting users' direct infringement through the use of the cdw.com website. CDW had knowledge of the '451 patent at the time it acted with the specific intent to induce infringement.

3. 21 srl adopts and incorporates herein all affirmative defenses available pursuant to Federal Rule of Civil Procedure 8 (or any applicable statute or regulation), to the extent the facts known at this time would make any of said defenses available or facts developed in the future would make same available.

WHEREFORE, 21 srl requests that judgment be entered against CDW and in 21 srl's favor on the Counterclaim brought by CDW. 21 srl further requests that it be granted all of the relief requested in its Complaint.

JURY DEMAND

21 srl demands a trial by jury on all issues properly triable to a jury.

Respectfully submitted,

/s/ Raymond P. Niro, Jr.

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CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PLAINTIFF'S RESPONSE TO CDW'S COUNTERCLAIM** was electronically filed with the Clerk of Court using CM/ECF system, which will send notification by electronic mail to the following:

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