

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

GOOSEBERRY NATURAL RESOURCES,	§	
LLC,	§	
	§	CIVIL ACTION NO.
	§	2:10-cv-00210-TJW
Plaintiffs,	§	
	§	JURY TRIAL DEMANDED
v.	§	
	§	
CONDESA, INC.,	§	
MASS MEDIA DISTRIBUTION, LLC	§	
MEK ENTERPRISES d/b/a	§	
ERELEASES.COM	§	
PROVEN WAYS, INC.,	§	
PR WORLDWIDE, INC., and	§	
RV MEDIA, LLC d/b/a PR 18 NETWORK,	§	
	§	
Defendants.	§	
	§	

**DEFENDANT’S PROVEN WAYS, INC.,
ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS**

Defendant Proven Ways, Inc, (hereinafter referred to as “Defendant”), through their attorneys, hereby answer Plaintiff’s Gooseberry Natural Resources, LLC (hereinafter referred to as “Plaintiff”) Complaint, as follows:

NATURE OF THE ACTION

1. DENY. Defendant denies infringement of United States Patent No. 6,370,535 (hereinafter referred to as the ‘535 Patent). Defendant is without sufficient knowledge or information to form a belief as to the truth of any license, exclusive or otherwise, of the ‘535 Patent.

PARTIES

2. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 2 and, therefore, deny the same.

3. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 3 and, therefore, deny the same.

4. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 4 and, therefore, deny the same.

5. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 5 and, therefore, deny the same.

6. ADMIT.

7. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 7 and, therefore, deny the same.

8. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 8 and, therefore, deny the same.

JURISDICTION AND VENUE

9. ADMIT.

10. ADMIT.

11. ADMITTED IN PART, DENIED IN PART. It is admitted that Defendant, directly and/or through intermediaries, ships, distributes, offers for sale, sells, and/or advertises (including the provision of an interactive web page) its products and services in the United States, the State of Texas, and the Eastern District of Texas. It is admitted that Defendant solicits customers in the State of Texas and in the Eastern District of Texas. It is specifically denied that Defendant has committed patent

infringement in the State of Texas and in the Eastern District of Texas, has contributed to patent infringement in the State of Texas and in the Eastern District of Texas, and/or has induced others to commit patent infringement in the State of Texas and in the Eastern District of Texas.

12. ADMIT.

COUNT I – PATENT INFRINGEMENT

13. ADMITTED IN PART, DENIED IN PART. It is admitted only that the ‘535 Patent was issued on April 9, 2002. It is denied that the issuance thereof was in compliance with the statutes relative thereto. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 13 and, therefore, deny the same.

14. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 14 and, therefore, deny the same.

15. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 15 and, therefore, deny the same.

16. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 16 and, therefore, deny the same.

17. DENY.

18. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 18 and, therefore, deny the same.

19. DENY. Defendant is without sufficient knowledge or information to form a belief as to the truth of allegations in Paragraph 19 and, therefore, deny the same.

20. ADMITTED IN PART, DENIED IN PART. It is admitted only that

Defendant has no patent license from Plaintiff. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 20 and, therefore, deny the same.

21. DENY.

22. DENY.

JURY DEMAND

23. Defendant demands a jury trial in this action.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief may be granted.

2. Plaintiff's claims are barred by laches, waiver, acquiescence, or estoppels.

3. Defendant denies that Plaintiff is entitled to relief of any kind, including any form of injunctive relief or any form of monetary relief.

4. Defendant has not infringed United States Patent No. 6,370,535 (hereinafter "'535 Patent") and Defendant asserts that the '535 Patent is invalid.

5. Defendant denies that they have infringed, contributed to infringement of, or induced the infringement of any of the claims of the '535 Patent, and Defendant asserts that the '535 Patent is invalid.

6. Defendant has not done any act or thing and are not proposing to do any act or thing in violation of any rights validly belonging to the Plaintiff in relation to the '535 Patent. The '535 Patent at issue here is invalid and unenforceable, is not infringed by Defendant, and Defendant is not liable for infringement of said patent.

7. The claims of the '535 Patent are invalid for failure to meet the requirements of 35 U.S.C. § 101, et seq., including at least §§ 101, 102, 103 and 112.

8. Other particulars with respect to the grounds of patent invalidity set forth above will be furnished to Plaintiff in writing by Defendant at least thirty (30) days before the trial of this civil action in compliance with 35 U.S.C. § 282. Any additional grounds of invalidity of the '535 Patent which Defendant may hereinafter learn will be brought to Plaintiff's notice by appropriate proceedings.

9. Any further defenses that may be established through discovery.

WHEREFORE, Defendant Proven Ways, Inc., respectfully request that this Court enter a judgment in favor of Defendant and against Plaintiff, as set forth below:

- a. A dismissal of Plaintiff's Complaint in its entirety;
- b. A denial of all relief sought by Plaintiff;
- c. Judgment in favor of Defendant and against Plaintiff;
- d. An award to Defendant of their costs and attorneys' fees incurred herein;

and,

- e. Such other relief as this Court may deem just and proper.

COUNTERCLAIMS

Defendant Proven Ways, Inc., (hereinafter referred to as “Defendant”), through their attorneys, allege as follows:

THE PARTIES

1. Defendant Proven Ways, Inc., is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 372 Wildrose Avenue, Bergenfield, NJ 07621.

2. Plaintiff Gooseberry Natural Resources, LLC, is a limited liability company organized and existing under the laws of the State of Texas. Plaintiff maintains its principal place of business at 101 East Part Boulevard, Suite 600 Plano, TX 75074.

JURISDICTION AND VENUE

4. Personal jurisdiction is proper over Plaintiff Gooseberry Natural Resources, LLC (hereinafter referred to as Plaintiff) based on their presence within this judicial district and further on their voluntary submission to jurisdiction upon its filing of its complaint in this action.

5. This Court has subject matter jurisdiction over the matters pleaded herein under 28 U.S.C. §§ 1331 and 1338(a).

6. Venue is proper pursuant to 28 U.S.C. § 1391(c), because the Plaintiff is a corporation, which shall be deemed to reside in the Eastern District of Texas because they were subject to personal jurisdiction at the time the action commenced.

FACTUAL ALLEGATIONS

7. Upon information and belief United States Patent No. 6,370,535 was filed on August 20th 1999.

8. Upon information and belief the examples provided in Exhibits A through G all predate the filing date of United States Patent No. 6,370,535 and would form a basis for unpatentability under 35 U.S.C. § 103, per *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007).

9. Upon information and belief the claims of United States Patent No. 6,370,535 do not meet the requirements under 35 U.S.C. § 101 for patentable material, as the patent directs the trivial transformation of words and phrases into a paragraph called a “press release” blatantly violating the rules and guidelines set out by the Supreme Court of the United States in the case of *Bilski v. Kappos*, No. 08-964, SUPREME COURT OF THE UNITED STATES, November 9, 2009, Argued, June 28, 2010, Decided, further citing *Gottschalk v. Benson*, 409 U.S. 63 (1972).

FIRST COUNTERCLAIM FOR RELIEF

(Declaratory Judgment of Invalidity of United States Patent No. 6,370,535)

10. Defendant incorporates all prior allegations of this Counterclaim as if fully set forth herein.

11. Upon information and belief some or all of the claims of U.S. Patent No. 6,370,535 are invalid, unenforceable and void for either lacking patentable subject matter under 35 U.S.C. § 101; for lacking novelty under 35 U.S.C. § 102; the invention of the patent would have been obvious to one skilled in the art at the time the invention was made under 35 U.S.C. § 103; and/or the claims are vague and ambiguous and thus unenforceable under 35 U.S.C. § 112.

JURY DEMAND

12. Defendant demands a jury trial in this action.

WHEREFORE, Defendant respectfully requests this Court to enter judgment in their favor and award the following relief against Plaintiff Gooseberry Natural Resources, LLC;

a. All claims of Patent No. 6,370,535 be found invalid and/or unenforceable and of no force or effect;

b. Declare that this matter is an exception case, and pursuant to 35 U.S.C. § 285 award Defendant their costs and reasonable attorney fees incurred in connection with this action;

c. Award and grant Defendant such other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted this 14th day of July, 2010,

ANDERSON & CUNNINGHAM, P.C.

/s/ David K. Anderson

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served upon all counsel of record pursuant to the Federal Rules of Civil Procedure and Local Rule CV-5(a) via Electronic Filing through the Court's CM/ECF on the 14th of July, 2010.

/s/ David K. Anderson

David K. Anderson