

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

**CATALYST CORPORATE FEDERAL
CREDIT UNION,**

Plaintiff,

v.

**IP NAVIGATION GROUP, LLC and
DOE NO. 1**

Defendants.

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Case No. _____

PLAINTIFF’S ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Catalyst Corporate Federal Credit Union (“Catalyst”) files this Complaint for Declaratory Judgment against Defendants IP Navigation Group, LLC (“IPNav”) and Doe No. 1 (“Doe”) (collectively “Defendants”), and in support would show the following:

Parties

1. Plaintiff Catalyst is a federal credit union, with its headquarters and its principal place of business located in Plano, Texas.

2. Defendant IPNav is a Texas limited liability company with its principal place of business is located at Two Lincoln Center, 5420 LBJ Freeway, Dallas, Texas. IPNav may be served with process through its registered agent for service of process, Erich L. Spangenberg, 5420 LBJ Freeway, Suite 750, Dallas, Texas.

3. The true name and capacity of Doe is not presently known to Catalyst. Doe is known to Catalyst only by the acts of Doe’s agent and cohort, IPNav. IPNav sent a letter to Catalyst purportedly on behalf of IPNav’s “client”, an unnamed patent holder asserting that the unnamed client possesses patents purportedly covering products or services made, used or sold

by Catalyst. A true and correct copy of this letter is attached hereto as Exhibit A. Discovery from IPNav will reveal the true identity of Doe, and Catalyst intends to seek the Court's aid in obtaining such necessary and appropriate discovery as soon as permitted.

Jurisdiction and Venue

4. This is a civil action for declaratory judgment of non-infringement under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 2201 *et seq.*; 28 U.S.C. §§ 1331 and 1338(a), and under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*

6. This Court has jurisdiction over IPNav because: (i) IPNav purposefully directed acts at a resident in this district giving rise to the Complaint; (ii) IPNav regularly and actively conducts business in this judicial district and has previously sued others in this judicial district for patent infringement; and (iii) upon information and belief it appears that IPNav maintains an office located in this judicial district.

7. This Court also has personal jurisdiction over Doe. On information and belief, Doe, acting by and through its agent, IPNav, purposefully directed acts at a resident of this district giving rise to this Complaint, and Doe's agent has regularly and actively conducted business in this judicial district.

8. Venue in this District is proper under 28 U.S.C. § 1391(b), 28 U.S.C. § 1391 (c), and/or 28 U.S.C. § 1400(a) because: (i) a substantial portion of the events giving rise to this action occurred in this judicial district; (ii) Defendants are each subject to personal jurisdiction in this District; and (iii) Defendants, acting individually and in concert with one another, purposefully directed acts at a resident in this district giving rise to this Complaint.

Factual Background

9. Catalyst is a federal credit union. The members of Catalyst are other credit unions and credit union service organizations (“CUSOs”). Catalyst presently has 1,432 members, consisting of 1,391 credit unions and 41 CUSOs. There are no individual natural persons who are members of Catalyst. Catalyst provides its member credit unions and CUSOs with a wide range of financial services including, but not limited to: (i) payment services (*e.g.* wire transfers); (ii) correspondent services (*e.g.* check processing and check collection); (iii) settlement accounts; (iv) loan and credit services; (v) off-balance sheet investment services; and (vi) access to excess balance account at the Dallas Federal Reserve Bank.

10. IPNav touts itself as being “a leading global intellectual property advisory firm” and boasts on its web site that its “expertise is monetizing patents.” IPNav further states that “we focus on turning intangible assets into tangible profits with our unparalleled monetization solutions.” IPNav claims that it employs an aggressive approach to monetizing patents, which has resulted in the filing and litigating of a large number of patent infringement lawsuits.

11. On or about March 27, 2012, IPNav sent Catalyst a letter titled “Proposal to Negotiate Patent License (*See* Exhibit A). Accompanying the letter was a one page “Confidentiality and Forebearance Agreement” (“Agreement”). The letter states that IPNav had been “engaged” by Doe who purports to own “valuable patents in the field of financial document processing.” IPNav further stated that “an analysis of your products shows that your company makes, uses, or sells products or services that would benefit from a license to [Doe’s] patents.” While refusing to identify Doe or the specific patents that IPNav and Doe intend to assert against Catalyst, IPNav demanded Catalyst sign the Agreement as a predicate to IPNav identifying “specific patents and provid[ing] information outlining the basis for the infringement claims

against your products or services.” The use of such language and tactics in its demand letter makes it clear that IPNav and Doe have already determined that they not only believe Catalyst is infringing the asserted patents, but also that IPNav and Doe are prepared to sue if Catalyst does not agree to their terms.

12. The Agreement provides that each party would maintain in strict confidence any nonpublic information provided by the other party, and that any such information could be used only for “the limited purpose of evaluating whether to enter into potential patent licensing arrangements.” Moreover, even if the parties would fail to reach an agreement, Catalyst would be required to maintain confidentiality of information it received from IPNav and/or Doe (which such information presumably would include Doe’s true identity) for a period of three years. In addition, the Agreement contained the following provision:

Each Party agrees that neither the request to engage in licensing discussions, nor the existence of licensing discussions under this Agreement, nor information disclosed during the course of those discussions under this Agreement shall form the basis for instituting legal proceedings against the other Party. Without limiting the preceding sentence, Company [*i.e.*, Catalyst] agrees that it will not bring an action for Declaratory Judgment against IPNav during the term of this Agreement.

Nothing in the Agreement, however, would prevent IPNav, or Doe from filing a patent infringement suit against Catalyst at any time. Finally, the letter demanded that Catalyst respond, and agree to waive its legal rights, within fourteen days of the date of the letter, a time period that IPNav agreed to extend for an additional ten days.

13. IPNav asserts that financial document processing systems and/or services infringe Doe’s patents. The letter demonstrates that, unless Catalyst entered into the Agreement, and later a licensing agreement, IPNav and/or Doe will take legal action against Catalyst, *i.e.*, in the form of a patent infringement lawsuit. By virtue of these allegations, as well as IPNav’s own

well documented history of using litigation to “monetize” intellectual property in this judicial district and others, Catalyst has a reasonable apprehension that IPNav and/or Doe will file suit against Catalyst. Indeed, these facts, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

14. Catalyst uses systems and methods for processing financial documents that result in the processing of millions of financial transactions every day. Catalyst is closely regulated and is regularly examined by the National Credit Union Association to ensure that its practices and procedures comply with all applicable laws and regulations. Catalyst is not aware, and has no reason to believe, that any of its financial document processing procedures or associated products or services infringe any valid claims of any enforceable patents. Catalyst expressly states that it is entitled to make, use, sell or offer to sell its financial document processing products and services without interference from IPNav and/or Doe.

15. As a direct result of the allegations, threats, conduct, and actions of IPNav and Doe, the Defendants have created an actual justiciable case and controversy between themselves and Catalyst concerning whether Catalyst is infringing any valid and enforceable claim of the asserted patents. Catalyst has been placed in the untenable position of being forced to choose between waiving its legal rights pursuant to the terms of the Agreement or subjecting itself to an ongoing threat of litigation and unspecified allegations of infringement directed at the core of Catalyst’s business. Catalyst refuses to make such a choice and, instead, asks this Court to declare Catalyst’s legal rights now in its home court.

Cause of Action

Declaratory Judgment

16. Catalyst realleges and incorporates herein the allegations contained in paragraphs 1 through 15.

17. Catalyst is not aware, and has no reason to believe, that any of its financial document processing procedures, products or services infringe any valid claim of the asserted patents.

18. IPNav and Doe have engaged in a course of conduct that demonstrates a preparedness and willingness to enforce their alleged patent rights and file suit against Catalyst. By reason of this course of conduct Catalyst is being forced to choose between abandoning its rights or risk being sued for patent infringement. Under all the circumstances, a substantial controversy exists, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

WHEREFORE, Catalyst respectfully prays that the Court enter judgment in its favor and award the following relief against IPNav and Doe:

- A. Declare that Catalyst has not infringed and is not infringing, directly or indirectly, any valid claims of the asserted patents;
- B. Permanently enjoin IPNav and Doe and their officers, directors, agents, servants, employees and attorneys, and any and all persons acting in concert with any of them, from asserting, stating, implying or suggesting that Catalyst and/or any of its respective officers, directors, agents, servants, employees, subsidiaries, affiliates, members or customers infringe any valid claim of the asserted patents;
- C. Find this case to be an exceptional case under 35 U.S.C. § 285;

- D. Award Catalyst its reasonable and necessary attorneys fees and costs incurred in connection with this action; and
- E. Award and grant Catalyst all other relief, at law or in equity, to which Catalyst may be entitled.

Jury Demand

Catalyst respectfully requests a jury trial on all issues so triable.

Respectfully submitted,

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