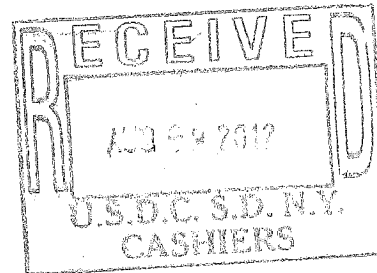


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HUMANSCALE CORPORATION

Plaintiff,

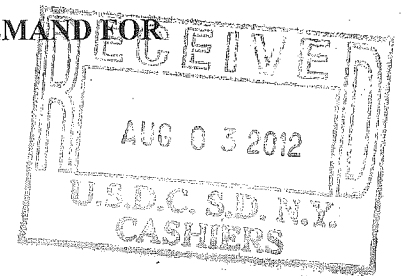
v.

MASS ENGINEERED DESIGN, INC. and
JERRY MOSCOVITCH

Defendants.

Civil Action No.

COMPLAINT AND DEMAND FOR
JURY TRIAL



Plaintiff Humanscale Corporation (“Humanscale”) seeks a declaratory judgment against Defendants Mass Engineered Design, Inc. and Jerry Moscovitch (collectively “Mass” or “Defendants”) that Humanscale does not infringe any valid claim of U.S. Patent No. Re. 36,978, titled “Dual Display System” (“the ’978 patent”). Humanscale also seeks a declaratory judgment

that the claims of the '978 patent are invalid and/or unenforceable. Specifically, Humanscale states and alleges as follows:

PARTIES

1. Humanscale is a corporation organized and existing under the laws of the State of New York, with its principal executive offices at 11 East 26th Street 8th Floor, New York, New York 10010.

2. Upon information and belief, Mass Engineered Design, Inc. is a corporation organized and existing under the laws of Ontario, Canada.

3. Upon information and belief, Jerry Moscovitch is a resident of Ontario, Canada.

JURISDICTION AND VENUE

4. This is an action for declaratory judgment of non-infringement and patent invalidity. This Court has subject matter jurisdiction over this action under at least 28 U.S.C. §§ 1331, 1332(a), 1338(a), 1367, and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.

5. Upon information and belief, Defendants are subject to general and specific personal jurisdiction in this Court pursuant to the principles of due process and New York's Long Arm Statute, at least because Defendants have transacted extensive business relevant to this action in the United States and New York. For example, upon information and belief, as described below, Defendants imported and sold prior art devices to Bloomberg L.P., which are highly relevant to the validity of the patent at issue. Upon information and belief, such sales and discussions prefatory to such sales occurred in New York. In addition, Defendants served Humanscale in New York with a complaint alleging infringement of the '978 patent.

6. Venue is proper in this Court under at least 28 U.S.C. §§ 1391(b)(1), (b)(2), (c)(2), and (c)(3) because Defendants are subject to personal jurisdiction in this judicial district, a substantial portion of the events giving rise to the present controversy occurred and continue to occur in this judicial district, and numerous witnesses and evidence relevant to this action are located in this judicial district.

FACTS

7. Humanscale is a leading designer of office furniture, including stands for computer monitors.

8. Jerry Moscovitch is the named inventor of the '978 patent, a copy of which is attached as Exhibit A.

9. Upon information and belief, Mass Engineered Design is a company created by Mr. Moscovitch and Mr. Moscovitch is the President and a board member of Mass Engineered Design.

The Undisclosed Prior Art Sales to Bloomberg L.P.

10. On information and belief, Mr. Moscovitch and/or his attorneys failed to disclose or provide to the patent office the EDI Industries, Ltd., Electrohome Electronics ("Electrohome"), and Bloomberg L.P. ("Bloomberg") prior art public uses, publications, offers for sale and sales of the LCD Dual Monitor Assembly, also known as the Bloomberg Terminal.

11. Upon information and belief, Mr. Moscovitch and Mass Engineered Design had manufactured, offered for sale, and sold dual display systems to Electrohome and/or Bloomberg between 1993 and April 25, 1995, knowing Bloomberg intended to publish, use, and sell these systems to its customers in the United States and elsewhere (the systems and related publications will be referred to collectively as the "Bloomberg prior art").

12. Upon information and belief, sales and publication of the Bloomberg prior art, along with discussions prefatory to such sales and publications, occurred in New York.

13. Upon information and belief, the Bloomberg prior art incorporated the invention claimed in at least claims 16 and 17 of the '978 patent, as those claims have been implicitly construed by Mass's infringement allegations discussed below.

14. As indicated by the prosecution file history of the '978 patent and its parent U.S. Patent No. 5,687,939, neither Mr. Moscovitch nor his attorneys disclosed the Bloomberg prior art to the Patent Office.

The Texas Litigation

15. On or about November 12, 2009, Defendants filed a Complaint against Humanscale and 29 other defendants in the United States District Court for the Eastern District of Texas alleging infringement of the '978 patent (the "Texas Litigation"). Defendants filed an Amended Complaint in the Texas Litigation on or about January 25, 2010 (the "Texas Complaint"), a true and correct copy of which is attached, without exhibits, as Exhibit B.

16. The Texas Complaint alleges that "[c]ollectively, JERRY MOSCOVITCH and MASS ENGINEERED DESIGN, INC. hold all rights and interests in the '978 Patent." (Ex. B ¶ 33.)

17. The Texas Complaint also alleges that

HumanScale has infringed and continues to infringe the '978 Patent by its manufacture, use, sale, importation and/or offer for sale of its multi-display units such as Model Nos. M7G, M7H, its Crossbar products and other products, and by its contributing to and inducement of others to manufacture, use, sell, import and/or offer for sale of infringing products. HumanScale is liable for infringement of the '978 Patent pursuant to 35 U.S.C. § 271.

(*Id.* ¶ 38.)

18. On or about June 1, 2012, Mass served infringement contentions further accusing specific products from Humanscale's "M8 with Crossbar, Para/Flex, M/Flex, M7, and M4" product lines of infringing the '978 patent. A true and correct copy of Mass's infringement contentions is attached as Exhibit C.

19. Humanscale answered Mass's amended Texas Complaint on June 14, 2010 (the "Texas Answer and Counterclaims"), a true and correct copy of which is attached as Exhibit D.

20. Humanscale's Texas Answer and Counterclaims denied Mass's infringement allegations and sought (a) declaratory judgment of non-infringement of the '978 patent, (b) declaratory judgment of invalidity of the '978 patent, and (c) declaratory judgment of unenforceability of the '978 patent. (Ex. D ¶¶ 38, 8-15, 22-32.)

21. On June 27, 2012, Humanscale and several other defendants in the Texas Litigation filed a motion to sever and dismiss Mass's allegations against each party other than the first-named defendant, pursuant to the Federal Circuit's recent decision in *In re EMC Corp.*, 677 F.3d 1351 (Fed. Cir. 2012), on the grounds that nearly all of the defendants were unrelated competitors of each other (the "Texas Severance Motion").

22. On July 30, 2012, Mass filed a surreply to the Texas Severance Motion, agreeing with the defendants that the litigation against each unrelated defendant should be severed and dismissed.

23. On August 2, 2012, Mass, Humanscale, and the other defendants to the Texas Litigation entered into a Stipulation of Dismissal Under Rule 41(a)(1)(A)(ii), pursuant to which the Texas Complaint against Humanscale and Humanscale's counterclaims against Mass were dismissed without prejudice to being re-filed.

24. Accordingly, an actual controversy has arisen between the parties as to the infringement, validity, and enforceability of the '978 patent. Humanscale reasonably anticipates that Mass will assert the '978 patent against Humanscale again in further infringement litigation.

COUNT 1: DECLARATION OF NON-INFRINGEMENT OF THE '978 PATENT

25. Humanscale re-alleges and incorporates the foregoing paragraphs by reference.

26. Based on Mass's filing of the Texas Complaint and Humanscale's Texas Answer and Counterclaims, an actual controversy has arisen between the parties as to whether any of Humanscale's products, services or activities infringe any valid claim of the '978 patent. Humanscale reasonably anticipates that Mass will assert the '978 patent against Humanscale again in further infringement litigation.

27. Humanscale's manufacture, offer for sale, and sale of its products do not infringe the '978 patent, either directly or indirectly.

28. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Humanscale requests a declaration from the Court that Humanscale does not infringe any claim of the '978 patent, either directly or indirectly.

COUNT 2: DECLARATION OF INVALIDITY OF THE '978 PATENT

29. Humanscale re-alleges and incorporates the foregoing paragraphs by reference.

30. Based on Mass's filing of the Texas Complaint and Humanscale's Texas Answer and Counterclaims, an actual controversy has arisen between the parties as to the validity of the claims of the '978 patent. Humanscale reasonably anticipates that Mass will assert the '978 patent against Humanscale again in further infringement litigation.

31. The claims of the '978 patent are invalid because they fail to comply with the provisions of the patent laws, 35 U.S.C. §§ 100 et seq., including sections 101, 102, 103, and/or 112, and 35 U.S.C. § 251.

32. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Humanscale requests a declaration from the Court that the claims of the '978 patent are invalid because they fail to comply with the provisions of the patent laws, 35 U.S.C. §§ 100 et seq., including sections 101, 102, 103, and/or 112, and 35 U.S.C. § 251.

COUNT 3: DECLARATION OF UNENFORCEABILITY OF THE '978 PATENT

33. Humanscale re-alleges and incorporates the foregoing paragraphs by reference.

34. Based on Mass's filing of the Texas Complaint and Humanscale's Texas Answer and Counterclaims, an actual controversy has arisen between the parties as to the enforceability of the claims of the '978 patent. Humanscale reasonably anticipates that Mass will assert the '978 patent against Humanscale again in further infringement litigation.

35. On information and belief, Mass's failure to disclose the Bloomberg prior art to the Patent Office was intentional, and intended to deceive and/or mislead the Patent Office into granting one or more claims of the '978 patent.

36. For at least that reason, each and every claim of the '978 patent is unenforceable due to inequitable conduct and/or fraud on the Patent Office.

37. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Humanscale requests a declaration from the Court that the claims of the '978 patent are unenforceable due to inequitable conduct and/or fraud on the Patent Office.

PRAYER FOR RELIEF

WHEREFORE, Humanscale prays that this Court enter judgment in its favor and grant the following relief:

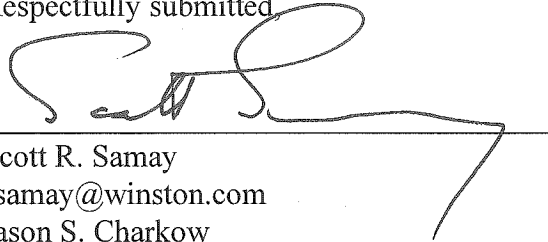
- A. A declaration that Humanscale has not directly or indirectly infringed any valid claim of the '978 patent;
- B. A declaration that each claim of the '978 patent is invalid;
- C. A declaration that the '978 patent is unenforceable;
- D. A declaration that this case is exceptional in favor of Humanscale under 35 U.S.C. § 285 and an award to Humanscale of its reasonable attorney fees, costs, and other expenses incurred in connection with this action under other applicable law;
- E. A grant to Humanscale of pre-judgment and post-judgment interest on all awards made; and
- F. An award to Humanscale of such further relief as the Court may deem appropriate.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Humanscale respectfully requests a trial by jury of all issues so triable.

Dated: August 3, 2012

Respectfully submitted



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