

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action Number:

FOUR WINDS INTERACTIVE LLC, a Colorado limited liability company,

Plaintiff,

v.

ACTIVISION TV, INC., a Delaware corporation,

Defendant.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff Four Winds Interactive LLC (“FWI”), for its complaint against Defendant Activision TV, Inc. (“Activision”) alleges as follows:

INTRODUCTION

For the past year, Defendant Activision, a patent assertion entity in the “business” of enforcing its roster of patents, has attempted to extract license royalties from FWI customers premised upon unfounded allegations of infringement. Activision’s tactics include the filing of two recent lawsuits in this judicial district against FWI customers. At the same time, Activision also engaged FWI, in an effort to pursue a joint venture.

Thus, FWI brings this action to stop Activision’s efforts to frustrate its business with its customers, to the detriment and damage of FWI. FWI seeks a

declaration from this Court that Activision's patents are not valid and that regardless, FWI's digital signage solutions do not infringe.

JURISDICTION

1. This Court has subject matter jurisdiction pursuant to 25 U.S.C. § 271 *et seq.* and § 1338(a), because this case involves a substantial federal question under the patent laws of the United States.

2. This Court has general personal jurisdiction over Activision based on its continuous and systematic contacts with this judicial district, which include, but are not limited to, the filing and maintenance of two lawsuits in this judicial district, *Activision TV, Inc. v. Inverness Properties LLC*, 1:2013-cv-02334 (filed August 29, 2013), and *Activision TV, Inc. v. Kats on Market, Inc.* 1:2013-cv-02332 (filed August 29, 2013), and the marketing of its patents, products, and services to customers located in this judicial district.

3. This Court also has specific personal jurisdiction over Activision. Activision purposefully directed business activities to residents of the forum, including, but not limited to, attempting to enforce its patents against FWI customers (Inverness Properties and Kats on the Market), and attempting to enter into a business arrangement with FWI regarding, at least in part, Activision's patents. Specifically, as recently as July, 2013, representatives of Activision contacted FWI in Colorado in an effort to pursue a joint venture with FWI. Furthermore, by threatening FWI customers in this district with litigation

over its patents, and the two already-filed litigations, Activision has specifically interfered with FWI's day-to-day operation of its business regarding digital signage in this judicial district. FWI's claims arise out of or relate to Activision's activities in this forum in that FWI is seeking a declaration that it and its customers may continue to operate their digital signage in this judicial district. The Court's exercise of jurisdiction over Activision is thus constitutionally reasonable and comports with principles of fair play and substantial justice.

PARTIES

4. Plaintiff Four Winds Interactive LLC is a Colorado limited liability company with its principal place of business at 3012 Huron Street, Denver, Colorado 80202-1094.

5. Defendant Activision TV, Inc. is a corporation organized under the laws of Delaware with its principal place of business at 5400 Yahl Street, Suite D, Naples, Florida 34109. Upon information and belief, Activision is in the business of licensing and enforcing its patents as well as designing, manufacturing and designing digital flat panel display systems for the hospitality, retail and government markets.

FACTUAL ALLEGATIONS

6. Founded in Denver in 2005 by two technology entrepreneurs, FWI has grown to a 280-employee company with significant annual revenues. Driven by the philosophy that software does not need to be difficult to use in order to

provide flexibility and functionality, FWI's business model focuses on digital signage software and services. FWI's software solutions include Content Manager, which allows users to leverage the content in digital systems to allow digital signs to be able to function at initiation. FWI also offers Content Player, which displays finished content and manages the overall experience of a system; Desktop Player, which displays a digital sign in a resizable window on desktops; and Screen Saver, which displays a digital sign each time a computer enters screen-saver mode. FWI further offers Content Manager Express, which provides access and the ability to manage signs via a HTML Player, which deploys signs on the Internet and iDS Kiosk, which allows users to employ iOS devices as digital signs or interactive kiosks by keeping the devices on, locked, and periodically refreshed. In addition to these products, FWI offers project management, signage architecture, creative, installation, training, and support services.

7. Activision purports to be the owner of several patents and pending applications relating to remote operation of electronic display systems, including, without limitation, the following U.S. patents: (1) U.S. Patent No. 8,330,613 (the "613 Patent"), entitled "REMOTE CONTROL ELECTRONIC DISPLAY SYSTEM," issued December 11, 2012; (2) U.S. Patent No. 7,369,058 (the "058 Patent"), entitled "REMOTE CONTROL ELECTRONIC DISPLAY SYSTEM," issued May 6, 2008; (3) U.S. Patent No. 6,384,736 (the "736 Patent"), entitled

“REMOTE CONTROL ELECTRONIC DISPLAY SYSTEM,” issued May 7, 2002; and (4) U.S. Patent No. 6,215,411, (the “411 Patent”), entitled “REMOTE CONTROL ELECTRONIC DISPLAY SYSTEM,” issued April 10, 2001 (collectively, the “Activision Patents”).

8. Beginning in 2007, and continuing until at least June 2013, Activision has attempted to partner with FWI. Specifically, David Gothard, President and CEO of Activision, proposed numerous business arrangements to FWI principally centered around purchasing FWI software for his own use or partnering with FWI, and around the Activision Patents. Activision also sought to combine its patent portfolio with FWI’s successful business model regarding design and manufacturing of digital signage solutions and the implementation of effective software. Indeed, Activision representatives, as recently as mid-2013, met and spoke with FWI team members in the specific effort to convince FWI that the Activision Patents could provide value to the company and that, without licensing or purchasing the Activision Patents, FWI would be infringing them. Despite the fact that FWI expressly requested that Activision specify its infringement allegations, Activision refused. Yet, it continued to accuse FWI’s customers of infringement, demanding licensing fees without warrant.

9. FWI analyzed the Activision Patents and determined that such a business arrangement, *i.e.*, licensing the Activision Patents, is unwanted and

unneded. FWI has not and does not infringe the Activision Patents, and they are invalid regardless.

10. During this same timeframe, Activision targeted FWI customers across the country, seeking to extract licensing revenues. Specifically, upon information and belief, Activision has sent scores of demand communications to FWI customers all across the United States, including Colorado, regarding the Activision Patents. Recently, Activision began suing certain of FWI customers in at least Minnesota, Texas, Maine, Delaware, and here in Colorado.

11. Activision's efforts to enforce the Activision Patents, vis-à-vis infringement allegations and lawsuits against FWI customers have and are causing detriment and damage to FWI.

COUNT ONE
**(Declaration of Invalidity Under the
Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*)**

12. FWI incorporates by reference the preceding allegations as though fully set forth herein.

13. An actual case or controversy exists between FWI and Activision with respect to the validity of each of the '613, '058, '736, and '411 Patents.

14. One or more claims of each of the '613, '058, '736 and '411 Patents fail to meet one or more of the conditions of patentability, or to otherwise satisfy the requirements set forth in Part II of Title 35 of the United States Code,

including 35 U.S.C. §§ 101, 102, 103 and 112, and the rules, regulations, and laws pertaining thereto.

15. The controversy is ripe for adjudication.

16. Absent a determination of invalidity, Activision will continue to assert the `613, `058, `736 and `411 Patents against FWI's customers, (and FWI) and thereby cause FWI to suffer irreparable injury and damage.

COUNT TWO
**(Declaration of Non-Infringement Under the
Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*)**

17. FWI incorporates by reference the preceding allegations as though fully set forth herein.

18. An actual case or controversy exists between FWI and Activision with respect to infringement of each of the `613, `058, `736 and `411 Patents.

19. FWI has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the `613, `058, `736 or `411 Patents, either literally or under the doctrine of equivalents.

20. The controversy is ripe for adjudication.

21. Absent a determination of non-infringement, Activision will continue to wrongfully assert the `613, `058, `736 and `411 Patents against FWI's customers, and thereby cause FWI to suffer irreparable injury and damage.

PRAYER FOR RELIEF

WHEREFORE, FWI respectfully requests that this Court enter judgment in its favor and grant the following relief:

A. Entry of judgment declaring that the claims of the Activision Patents are invalid.

B. Entry of judgment declaring that FWI has not and does not infringe literally or under the doctrine of equivalents, any valid and enforceable claim of the Activision Patents.

C. An order enjoining Activision and its affiliates, subsidiaries, assigns, employees, agents, or anyone acting in privity or concert with them from filing any action for infringement of the Activision Patents against FWI or anyone acting for FWI, or anyone using digital signage provided or supplied by FWI.

D. Any other relief the Court may deem just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff Four Winds Interactive LLC demands a trial by jury as to all issues so triable.

Dated: October 2, 2013.

s/ Evan M. Rothstein _____

Evan M. Rothstein

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