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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORTLAND DIVISION**

**INVELLOP, LLC**, an Oregon limited liability  
company,

Plaintiff,

v.

**JERALD A. BOVINO**, an individual,

Defendant.

Case No. 3:14-cv-00033

**COMPLAINT**

**(1) Declaratory Judgment of Patent**

**Noninfringement**

**(2) Declaratory Judgment of Patent**

**Invalidity**

**(3) Abuse of Process**

**DEMAND FOR JURY TRIAL**

Plaintiff Invellop, LLC (hereinafter referred to as “Invellop”) alleges against Defendant Jerald A. Bovino as follows, based upon actual knowledge with respect to Plaintiff and Plaintiff’s acts, and based upon information and belief with respect to all other matters:

### **NATURE OF THE CASE**

1. This is a civil action seeking a declaratory judgment that Plaintiff Invellop's products, do not infringe any intellectual property right of Defendant, and seeking damages for abuse of process. Specifically, Invellop seeks a declaratory judgment (a) that Invellop's products do not infringe U.S. Patent No. 6,977,809 (the "'809 patent," Exhibit A), (b) that the '809 patent is invalid and/or unenforceable, and (c) that Defendant's alleging, in a complaint against Amazon.com, Inc. (Exhibit B), that Invellop products infringe the '809 patent, as well as Defendant's conduct in that litigation, constitute an abuse of process.

### **THE PARTIES**

2. Plaintiff Invellop is an Oregon Limited Liability Company with a principal place of business at 845 NW Dunbar Ave., Ste 117, Troutdale, OR 97060.

3. Invellop is a small business formed in 2012 by Dan and Angelina Kuzmenko of Portland, Oregon, who own and operate Invellop without any employees.

4. Defendant Jerald A. Bovino is believed to be a resident of the State of Colorado, having a principal place of residence at 804 Hunter Creek Road, Aspen, Colorado 81612.

### **JURISDICTION AND VENUE**

5. This is a declaratory judgment action brought under 28 U.S.C. § 2201.

6. This Court has federal question jurisdiction under 28 U.S.C. §§ 1331 and 1338(a) because this case involves federal questions arising under the patent and trademark laws of the United States. 35 U.S.C. § 1 *et seq.*; 15 U.S.C. § 1051 *et seq.*

7. This Court has supplemental jurisdiction over the state law claim for abuse of process.

8. This Court has personal jurisdiction over Defendant at least because of the intended and actual effects of Defendant's actions in making accusations of patent infringement implicating Invellop LLC.

9. Venue is proper in this Court under 28 U.S.C. § 1391(c).

### **BACKGROUND FACTS**

10. Defendant sued Amazon.com, Inc. on August 7, 2013, alleging patent infringement in Colorado in *Bovino v. Amazon.com, Inc.* 1:13-CV-02111-MSK-MJW ("the Colorado litigation"). See Exhibit B.

11. Defendant alleges in the Colorado litigation that Amazon.com, Inc. infringes the '809 patent by "use, sale, offering for sale, and/or manufacturing of Portable Computer Cases." Exhibit B, ¶ 8.

12. Amazon.com, Inc. is among the top 50 or so largest corporations in the United States and provides a web-based market for thousands of product sellers, including several selling products that are arguably "portable computer cases."

13. However, the '809 patent does not cover a "portable computer case," but rather a portable computer. Exhibit A, Col. 3-4, claims 1-10 (reciting the limitations on an invention for a portable computer).

14. The '809 patent clearly and unequivocally distinguishes its invention for a portable computer from a separate case or cover to attach to a computer:

"The present invention is directed to a portable computer having an integral case..." Abstract.

Describing the **prior art** before the invention: "Accordingly, a **separate protective case** is utilized with the portable computer when it is necessary to transport the portable computer or to protect the portable computer from levels of

wear and tear that are not normally encountered when using such a portable computer.” Col. 1, lines 19-23.

Describing the **prior art** before the invention: “The **protective case is designed to fit around the portable computer** and usually has a zipper or other securing means that allows the protective case to be secured around the portable computer.” Col. 1, lines 24-27.

Describing the **prior art** before the invention: “In many instances, the protective case has a **layer of padding or other protective material in the interior of the protective case** to provide additional protection for the protective computer.” Col. 1, lines 27-30.

“Accordingly, it is **an object of the present invention** to provide a **portable computer that does not require a separate carrying case** to protect the portable computer from wear and tear during the transporting of the portable computer.” Col. 1, lines 62-65.

“As **the portable computer 10 does not have a separate case**, it is not necessary to remove the portable computer from the separate case at security monitoring locations.” Col. 3, lines 32-35.

15. Defendant alleges in the Colorado litigation that Amazon.com’s “acts of infringement include, but are not limited to, Defendant Amazon.com’s sale of the INVELLOP case cover for the New iPad, the iPad 2, the iPad 3, and the iPad mini.” Exhibit 2, ¶ 10.

16. Invellop does not make computers of any type, but rather separate covers that may be attached to a computer as acknowledged to be prior art and not the patented invention in the ‘809 patent.

17. Despite the lack of any good faith basis for alleging that Invellop’s covers are the patented computer of the ‘809 patent, Defendant made the above-noted allegations in the Colorado litigation.

18. Defendant’s allegations and conduct in the Colorado litigation potentially make Invellop liable to Amazon.com for the cost of defending Amazon.com to an extent that is not

fully known at present but that may be predicted to be significantly out of proportion to the size of Invellop's operation.

19. Defendant filed, and is conducting, the Colorado litigation with the knowledge and intent that Invellop would be forced to hire attorneys to defend Amazon.com, Inc. and to bear costs beyond Invellop's capacities.

**COUNT I – DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF THE '809 PATENT**

**(22 U.S.C. § 2201)**

20. Plaintiff hereby realleges and incorporates by reference the allegations in the foregoing paragraphs as though fully set forth herein.

21. Invellop's making, using, selling, offering for sale, and/or importing its covers do not infringe the '809 patent, directly or indirectly.

**COUNT II – DECLARATORY JUDGMENT OF  
INVALIDITY AND/OR UNENFORCEABILITY OF THE '809 PATENT**

**(22 U.S.C. § 2201)**

22. Plaintiff hereby realleges and incorporates by reference the allegations in the foregoing paragraphs as though fully set forth herein.

23. The '809 patent is invalid and/or unenforceable under 35 U.S.C. §§ 102, 103, 112, and/or other provisions of U.S. patent laws, 35 U.S.C. § 1 *et seq.*

**COUNT III – ABUSE OF PROCESS**

24. Plaintiff hereby realleges and incorporates by reference the allegations in the foregoing paragraphs as though fully set forth herein.

25. Defendant’s allegations in the Colorado litigation that Invellop’s covers infringe the ‘809 patent lack any good faith basis, and the suing of Amazon.com, Inc. in Colorado while identifying Invellop’s covers as infringing, and the ongoing conduct in that litigation are a perversion of the process of litigation of patent infringement claims to disadvantage and burden Invellop in an amount far exceeding any potential liability for patent infringement.

26. Defendant’s actions thus constitute an abuse of process under Oregon and/or Colorado law.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Invellop prays for judgment and declaratory relief as follows:

- A. Declaring that the Accused Products do not infringe the '809 patent;
- B. Declaring that the '809 patent is invalid and/or unenforceable;
- C. Declaring that the Colorado complaint and the conduct of litigation there are an abuse of process;
- D. Awarding Plaintiff damages for Defendant's abuse of process in the Colorado litigation;
- E. Awarding Plaintiff its costs and attorney's fees incurred in conjunction with this lawsuit and the Colorado litigation; and
- F. Awarding Plaintiff any other relief that this Court deems just and proper.

**JURY DEMAND**

Plaintiff Invellop hereby demands a trial by jury of all issues so triable.

DATED this 7th day of January, 2014.

Respectfully submitted,

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