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

LODSYS, LLC,	§	
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
ADIDAS AMERICA INC.;	§	CIVIL ACTION NO. 2:11-cv-283
BBY SOLUTIONS, INC.;	§	
BEST WESTERN INTERNATIONAL, INC.;	§	**JURY TRIAL DEMANDED**
CVS PHARMACY, INC.;	§	
SAM'S WEST, INC.;	§	
STANLEY, BLACK & DECKER, INC.;	§	
THE CONTAINER STORE, INC.;	§	
THE TEACHING COMPANY, LLC;	§	
VEGAS.COM, LLC;	§	
VITAMIN SHOPPE, INC.,	§	
	§	
Defendants.	§	

DEFENDANT SAM'S WEST, INC'S ANSWER AND COUNTERCLAIMS TO PLAINTIFF'S COMPLAINT FOR PATENT INFRINGEMENT

Defendant Sam's West, Inc. ("Sam's West") files this Answer and Counterclaims to Plaintiff Lodsys, LLC's ("Plaintiff") Complaint for Patent Infringement ("Complaint").

THE PARTIES

1. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 1 of the Complaint.

2. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 2 of the Complaint.

3. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 3 of the Complaint.

4. Sam's West is without sufficient knowledge or information to admit or deny the

allegations contained in Paragraph 4 of the Complaint.

5. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 5 of the Complaint.

6. Sam's West admits that it is an Arkansas company with its principal place of business in Bentonville, Arkansas.

7. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 7 of the Complaint.

8. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 8 of the Complaint.

9. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 9 of the Complaint.

10. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 10 of the Complaint.

11. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 11 of the Complaint.

JURISDICTION AND VENUE

12. With respect to Paragraph 12 of the Complaint, Sam's West admits that Plaintiff purports to pursue an action for patent infringement and, accordingly, this action arises under the provisions of the Patent Laws of the United States of America, Title 35, United States Code. Sam's West admits that the Court has subject-matter jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1338(a). Sam's West admits that it is subject to personal jurisdiction in Texas and admits that venue is proper in the Court pursuant to 28 U.S.C. §§ 1391 and 1400. Sam's West admits that it conducts business activities within the State of Texas and within this

District. Sam's West denies the remaining allegations in Paragraph 12 as they pertain to Sam's West. Sam's West is without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 12 of the Complaint.

13. With respect to Paragraph 13 of the Complaint, Sam's West admits that it is subject to personal jurisdiction in Texas. Sam's West admits that it conducts business activities within the State of Texas and within this District which include deriving revenue from products and/or services provided to individuals residing in the State of Texas and this District. Sam's West denies the remaining allegations in Paragraph 13 as they pertain to Sam's West. Sam's West is without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 13 of the Complaint.

INFRINGEMENT OF U.S. PATENT NO. 7,222,078 B2

14. With respect to Paragraph 14 of the Complaint, Sam's West admits that, on its face, United States Patent No. 7,222,078 (the "'078 Patent") identifies that it issued on May 22, 2007, and is entitled "Methods and Systems for Gathering Information From Units of a Commodity Across a Network." Sam's West admits that a copy of the '078 Patent was attached as Exhibit A to the Complaint. Sam's West denies that the '078 Patent was duly and legally issued. Sam's West is without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 14 of the Complaint.

15. Sam's West denies the allegations contained in Paragraph 15 of the Complaint.

16. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 16 of the Complaint.

17. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 17 of the Complaint.

18. Sam's West denies the allegations in Paragraph 18 as they pertain to Sam's West. Sam's West is without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 18 of the Complaint.

INFRINGEMENT OF U.S. PATENT NO. 5,999,908

19. With respect to Paragraph 19 of the Complaint, Sam's West admits that, on its face, United States Patent No. 5,999,908 (the "'908 Patent") identifies that it issued on December 7, 1999, and is entitled "Customer-Based Product Design Module." Sam's West admits that a copy of the '908 Patent was attached as Exhibit B to the Complaint. Sam's West is without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 19 of the Complaint.

20. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 20 of the Complaint.

21. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 21 of the Complaint.

22. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 22 of the Complaint.

23. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 23 of the Complaint.

24. Sam's West denies the allegations contained in Paragraph 24 of the Complaint.

25. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 25 of the Complaint.

26. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 26 of the Complaint.

27. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 27 of the Complaint.

28. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 28 of the Complaint.

29. Sam's West is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 29 of the Complaint.

30. Sam's West denies the allegations in Paragraph 30 as they pertain to Sam's West. Sam's West is without sufficient knowledge or information to admit or deny the remaining allegations contained in Paragraph 30 of the Complaint.

JURY DEMAND

31. Sam's West admits that Plaintiff has requested a trial by jury.

PRAYER FOR RELIEF

32. Sam's West denies any and all allegations contained in the Prayer for Relief of the Complaint as they pertain to Sam's West and denies that Plaintiff is entitled to any of the relief requested in Paragraphs (a) through (f) of Plaintiff's Prayer for Relief or to any relief in any form whatsoever from Sam's West. Sam's West further denies each and every allegation in the Complaint to which it has not specifically responded.

AFFIRMATIVE AND OTHER DEFENSES

First Defense

33. Sam's West has not willfully or otherwise infringed, contributed to the infringement of, or actively induced others to infringe any valid and enforceable claim of the '908 or '078 Patents, either directly or indirectly, either literally or under the doctrine of equivalents. Sam's West also does not willfully or otherwise infringe, contribute to the

infringement of, or actively induce others to infringe any valid and enforceable claim of the '908 or '078 Patents, either directly or indirectly, either literally or under the doctrine of equivalents.

Second Defense

34. The claims of the '908 and '078 Patents are invalid for failure to comply with the requirements of Title 35 of the United States Code, including, without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112.

Third Defense

35. By reason of proceedings in the United States Patent and Trademark Office, and by reasons of amendments, statements, admissions, omissions, representations, disclaimers and/or disavowals made by the applicants or on their behalf, Plaintiff is estopped from asserting infringement of the '908 and '078 Patents against Sam's West.

Fourth Defense

36. Plaintiff's claims are barred to the extent that Plaintiff has dedicated to the public systems, methods, and products disclosed in the '908 and '078 Patents but not literally claimed therein.

Fifth Defense

37. Plaintiff is prohibited from recovering damages for activities alleged to have occurred before Plaintiff complies with 35 U.S.C. § 287.

Sixth Defense

38. Plaintiff is prohibited from recovering damages for activities alleged to have occurred before Plaintiff provides actual notice of activities alleged to infringe.

Seventh Defense

39. Plaintiff's claims for equitable relief are barred or limited because Plaintiff has

adequate remedies at law because Plaintiff has unclean hands.

Eighth Defense

40. Plaintiff's claims for injunctive relief are barred because Plaintiff has failed to meet the requirements for injunctive relief.

Ninth Defense

41. Sam's West has not engaged in any conduct that entitles Plaintiff to attorneys' fees or costs.

Tenth Defense

42. To the extent that Plaintiff asserts claims and/or requests damages for alleged infringement occurring more than six years before the filling of this action, such claims and relief are barred by the applicable statute of limitations, 35 U.S.C. § 286.

Eleventh Defense

43. Plaintiff's claims are barred, in whole or in part, by the doctrine of laches.

Twelfth Defense

44. Plaintiff's claims are barred to the extent that Plaintiff has consented to Sam's West engaging in any acts of accused infringement, and to the extent that Plaintiff has waived the right to enforce the '908 and '078 Patents.

Thirteenth Defense

45. Plaintiff's claims are barred to the extent that Plaintiff's allegations of infringement relate to acts that have at all relevant times been by or for the United States and with the authorization or consent of the United States. Sam's West is entitled to immunity for such activities under 28 U.S.C. § 1498(a).

Fourteenth Defense

46. Any and all products or actions accused of infringement have substantial uses that do not infringe and do not induce or contribute to the alleged infringement of the claims of the '908 and '078 Patents.

COUNTERCLAIMS

47. Counter-Plaintiff Sam's West is an Arkansas company with its principal place of business located at 702 SW 8th St. M/S 0215, Bentonville, Arkansas 72716-0215.

48. Based on information and belief, Plaintiff Lodsys is a Texas limited liability company with its principal place of business in Marshall, Texas.

49. Plaintiff claims to be the owner of U.S. Patent Nos. 5,999,908 ("the '908 Patent") and 7,222,078 ("the '078 Patent") (collectively, the "Lodsys Patents").

50. This is an action for a declaration that each and every claim of the Lodsys Patents is invalid, unenforceable and not infringed pursuant to the Patent Laws of the United States, 35 U.S.C. § 101, *et seq*. Accordingly, subject matter jurisdiction of this Court exists under the Federal Declaratory Judgment Act, Title 28, United States Code §§ 2201 and 2202, and under Title 28, United States Code §§ 1331 and 1338(a).

51. An actual, substantial and continuing justiciable controversy exists between Counter-Plaintiff Sam's West and Counter-Defendant Lodsys with respect to which Counter-Plaintiff Sam's West requires a declaration of its rights by this Court. Specifically, the controversy relates to the invalidity, unenforceability and non-infringement of the Lodsys Patents and to Counter-Defendant Lodsys's right to threaten and/or maintain a suit against Counter-Plaintiff Sam's West and/or its customers for alleged infringement of the Lodsys Patents. Lodsys has chosen this venue to enforce its patents. Venue is proper in this Court and judicial

district for counterclaims, pursuant to 28 U.S.C. §§ 1391 and 1400(b).

52. Defendant Sam's West brings the following counterclaims against Plaintiff Lodsys:

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '908 PATENT

53. Sam's West realleges and incorporates by reference the allegations of Paragraphs 47-52 as though fully set forth herein.

54. This is an action for declaratory judgment of non-infringement of any and all valid and enforceable claims of the '908 Patent.

55. Counter-Defendant Lodsys alleges that Counter-Plaintiff Sam's West has and is infringing directly and/or by inducing or contributing to the infringement of one or more claims of the '908 Patent, that such alleged infringement has thereby damaged Counter-Defendant Lodsys and, unless enjoined, will continue to damage Counter-Defendant Lodsys.

56. Counter-Plaintiff Sam's West has not willfully or otherwise infringed, contributed to the infringement of, or induced others to infringe, and does not willfully or otherwise infringe, contribute to the infringement of, or induce others to infringe, any valid and enforceable claim of the '908 Patent, either directly or indirectly, either literally or under the doctrine of equivalents.

57. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between Counter-Plaintiff Sam's West and Counter-Defendant Lodsys as to whether Counter-Plaintiff Sam's West has infringed or infringes any valid and enforceable claim of the '908 Patent.

58. Counter-Plaintiff Sam's West requests a judicial determination and declaration of the respective rights and duties of the parties on the disputes recited in Paragraphs 53-57 above. Such a determination and declaration are necessary and appropriate at this time so that the parties

may ascertain their respective rights and duties in this regard.

DECLARATORY JUDGMENT OF INVALIDITY OF THE '908 PATENT

59. Counter-Plaintiff Sam's West realleges and incorporates by reference the allegations of Paragraphs 47-58 as though fully set forth herein.

60. This is an action for declaratory judgment of invalidity of any and all claims of the '908 Patent.

61. The '908 Patent, and each claim thereof, is invalid for failure to comply with one or more of the requirements of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103 and/or 112.

62. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between Counter-Plaintiff Sam's West and Counter-Defendant Lodsys as to whether there exists any valid claim of the '908 Patent.

63. Counter-Plaintiff Sam's West requests a judicial determination and declaration of the respective rights and duties of the parties on the disputes recited in Paragraphs 59-62 above. Such a determination and declaration are necessary and appropriate at this time so that the parties may ascertain their respective rights and duties in this regard.

DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '078 PATENT

64. Sam's West realleges and incorporates by reference the allegations of Paragraphs 47-63 as though fully set forth herein.

65. This is an action for declaratory judgment of non-infringement of any and all valid and enforceable claims of the '078 Patent.

66. Counter-Defendant Lodsys alleges that Counter-Plaintiff Sam's West has and is infringing directly and/or by inducing or contributing to the infringement of one or more claims

of the '078 Patent, that such alleged infringement has thereby damaged Counter-Defendant Lodsys and, unless enjoined, will continue to damage Counter-Defendant Lodsys.

67. Counter-Plaintiff Sam's West has not willfully or otherwise infringed, contributed to the infringement of, or induced others to infringe, and does not willfully or otherwise infringe, contribute to the infringement of, or induce others to infringe, any valid and enforceable claim of the '078 Patent, either directly or indirectly, either literally or under the doctrine of equivalents.

68. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and 2202, between Counter-Plaintiff Sam's West and Counter-Defendant Lodsys as to whether Counter-Plaintiff Sam's West has infringed or infringes any valid and enforceable claim of the '078 Patent.

69. Counter-Plaintiff Sam's West requests a judicial determination and declaration of the respective rights and duties of the parties on the disputes recited in Paragraphs 64-68 above. Such a determination and declaration are necessary and appropriate at this time so that the parties may ascertain their respective rights and duties in this regard.

DECLARATORY JUDGMENT OF INVALIDITY OF THE '078 PATENT

70. Counter-Plaintiff Sam's West realleges and incorporates by reference the allegations of Paragraphs 47-69 as though fully set forth herein.

71. This is an action for declaratory judgment of invalidity of any and all claims of the '078 Patent.

72. The '078 Patent, and each claim thereof, is invalid for failure to comply with one or more of the requirements of Title 35, United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103 and/or 112.

73. There is an actual controversy, within the meaning of 28 U.S.C. §§ 2201 and

2202, between Counter-Plaintiff Sam's West and Counter-Defendant Lodsys as to whether there exists any valid claim of the '078 Patent.

74. Counter-Plaintiff Sam's West requests a judicial determination and declaration of the respective rights and duties of the parties on the disputes recited in Paragraphs 70-73 above. Such a determination and declaration are necessary and appropriate at this time so that the parties may ascertain their respective rights and duties in this regard.

PRAYER FOR RELIEF

Sam's West prays for judgment as follows:

A. That this Court fully and finally dismiss Plaintiff's claims against Sam's West and order that Plaintiff take nothing from Sam's West;

B. That this Court find that Sam's West has not infringed, in any manner, any claim of the '908 or '078 Patents;

C. That this Court find that the '908 and '078 Patents are invalid and/or unenforceable pursuant to Title 35 of the United States Code;

D. That this Court issue a declaration that the claims of the '908 and '078 Patents are invalid, unenforceable, and/or not infringed;

E. That this Court award Sam's West all of its costs of this action;

F. That this Court find that this is an exceptional case and award Sam's West its attorneys' fees pursuant to 35 U.S.C. § 285 or otherwise; and

G. That this Court grant Sam's West such other and further relief as the Court may deem just and proper.

Dated: September 26, 2011

Respectfully submitted,

/s/ Christopher W. Kennerly
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ATTORNEYS FOR DEFENDANT SAM'S WEST, INC.

CERTIFICATE OF SERVICE

I certify that on September 26, 2011 all counsel of record were served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Christopher W. Kennerly
Christopher W. Kennerly