

10 CV 5758

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

barnesandnoble.com llc,

Plaintiff,

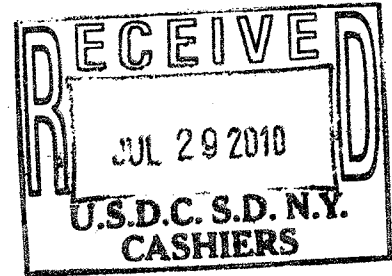
v.

Xerox Corporation,

Defendant.

Civil Action No.:

JURY TRIAL DEMANDED



COMPLAINT

Plaintiff barnesandnoble.com llc, by its attorneys, Dickstein Shapiro LLP, for its complaint against defendant Xerox Corporation, states as follows:

NATURE OF THE ACTION

1. This is a civil action for a declaratory judgment pursuant to 28 U.S.C. § 2201 with respect to an actual controversy arising under the Patent Laws of the United States.

THE PARTIES

2. Plaintiff barnesandnoble.com llc is a limited liability company of the State of Delaware with offices in this district at 76 9th Avenue, New York, New York 10011-4692.

3. Defendant Xerox Corporation ("Xerox") is a corporation of the State of New York with its principal place of business at 45 Glover Avenue, Norwalk, Connecticut 06850. Xerox conducts business throughout the United States, including within the State of New York and within this district.

### JURISDICTION AND VENUE

4. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the Patent Laws of the United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Xerox because (a) Xerox is a corporation of the State of New York, (b) Xerox asserted its patent rights against barnesandnoble.com llc in New York State, and (c) Xerox transacts business in New York State and regularly contracts to supply goods and services in the State of New York.

6. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391 and 1400(b).

### FACTUAL BACKGROUND

7. barnesandnoble.com llc is a retailer of books and other merchandise over the Internet.

8. Xerox is a vendor of office equipment including photocopiers and printers, and also sells business services.

9. Xerox has accused barnesandnoble.com llc's web site of infringing four Xerox patents, U.S. Patent Nos. 5,513,126 (the "126 patent") (attached as Exhibit A), 5,689,642 (the "642 patent") (attached as Exhibit B), 6,236,994 (the "994 patent") (attached as Exhibit C), and 6,999,962 (the "962 patent") (attached as Exhibit D), and has requested that barnesandnoble.com llc take a license under these patents. On information and belief, Xerox has sufficient right, title and/or interest in the '126, '642, '994 and '962 patents to bring suit for alleged infringement of those patents.

10. barnesandnoble.com llc does not make, use, or sell any device or use any method that infringes any valid claim of the '126, '642, '994 or '962 patents.

11. A declaration of rights between the parties is necessary to establish that barnesandnoble.com llc does not infringe any valid claim of the '126, '642, '994 and '962 patents.

CAUSE OF ACTION

Count I – Declaratory Judgment Of Noninfringement Of  
U.S. Patent No. 5,513,126

12. barnesandnoble.com llc repeats and realleges the allegations contained in paragraphs 1 through 11.

13. barnesandnoble.com llc's web site does not infringe any valid claim of the '126 patent.

14. barnesandnoble.com llc is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that barnesandnoble.com llc does not infringe any valid claim of the '126 patent.

Count II – Declaratory Judgment Of Invalidity Of  
U.S. Patent No. 5,513,126

15. barnesandnoble.com llc repeats and realleges the allegations contained in paragraphs 1 through 11.

16. The claims of the '126 patent are not valid for failure to comply with the requirements of the Patent Statutes, 35 U.S.C. § 1, et seq., including but not limited to §§ 102, 103 and 112.

17. barnesandnoble.com llc is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the '126 patent is invalid.

Count III – Declaratory Judgment Of Noninfringement Of  
U.S. Patent No. 5,689,642

18. barnesandnoble.com llc repeats and realleges the allegations contained in

paragraphs 1 through 11.

19. barnesandnoble.com llc's web site does not infringe any valid claim of the '642 patent.

20. barnesandnoble.com llc is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that barnesandnoble.com llc does not infringe any valid claim of the '642 patent.

Count IV – Declaratory Judgment Of Invalidity Of  
U.S. Patent No. 5,689,642

21. barnesandnoble.com llc repeats and realleges the allegations contained in paragraphs 1 through 11.

22. The claims of the '642 patent are not valid for failure to comply with the requirements of the Patent Statutes, 35 U.S.C. § 1, et seq., including but not limited to §§ 102, 103 and 112.

23. barnesandnoble.com llc is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the '642 patent is invalid.

Count V – Declaratory Judgment Of Noninfringement Of  
U.S. Patent No. 6,236,994

24. barnesandnoble.com llc repeats and realleges the allegations contained in paragraphs 1 through 11.

25. barnesandnoble.com llc's web site does not infringe any valid claim of the '994 patent.

26. barnesandnoble.com llc is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that barnesandnoble.com llc does not infringe the any valid claim of '994 patent.

Count VI – Declaratory Judgment Of Invalidity Of  
U.S. Patent No. 6,236,994

27. barnesandnoble.com llc repeats and realleges the allegations contained in paragraphs 1 through 11.

28. The claims of the '994 patent are not valid for failure to comply with the requirements of the Patent Statutes, 35 U.S.C. § 1, et seq., including but not limited to §§ 102, 103 and 112.

29. barnesandnoble.com llc is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that the '994 patent is invalid.

Count VII – Declaratory Judgment Of Noninfringement Of  
U.S. Patent No. 6,999,962

30. barnesandnoble.com llc repeats and realleges the allegations contained in paragraphs 1 through 11.

31. barnesandnoble.com llc's web site does not infringe any valid claim of the '962 patent.

32. barnesandnoble.com llc is entitled to entry of judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring that barnesandnoble.com llc does not infringe any valid claim of the '962 patent.

Count VIII – Declaratory Judgment Of Invalidity Of  
U.S. Patent No. 6,999,962

33. barnesandnoble.com llc repeats and realleges the allegations contained in paragraphs 1 through 11.

34. The claims of the '962 patent are not valid for failure to comply with the requirements of the Patent Statutes, 35 U.S.C. § 1, et seq., including but not limited to §§ 102, 103 and 112.

35. barnesandnoble.com llc is entitled to entry of judgment pursuant to 28 U.S.C. §§

2201 and 2202 declaring that the '962 patent is invalid.

REQUEST FOR RELIEF

Plaintiff barnesandnoble.com llc requests that the Court enter a judgment:

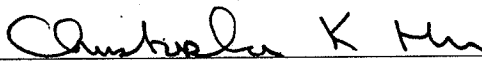
- A. Declaring that barnesandnoble.com llc does not infringe any valid claim of U.S. Patent Nos. 5,513,126, 5,689,642, 6,236,994 and 6,999,962;
- B. Declaring that the claims of U.S. Patent Nos. 5,513,126, 5,689,642, 6,236,994 and 6,999,962 are not valid;
- C. Finding that this is an exceptional case pursuant to 35 U.S.C. § 285 and awarding barnesandnoble.com llc its reasonable attorney fees, expenses and costs incurred in this action.
- D. Such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b), Fed. R. Civ. P., plaintiff barnesandnoble.com llc demands a trial by jury on all issues triable of right by a jury.

DICKSTEIN SHAPIRO LLP

Dated: July 29, 2010

  
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