

ORIGINAL

1 Bingham McCutchen LLP
WILLIAM F. ABRAMS (SBN 88805)
2 CARLOS P. MINO (SBN 247022)
1117 S. California Avenue
3 Palo Alto, California 94304-1106
Telephone: (650) 849-4400
4 Facsimile: (650) 849-4800
william.abrams@bingham.com
5 carlos.mino@bingham.com

E-filing

Filed

DEC - 6 2011

paid
14

6 Attorneys for Plaintiff
ZOOVE CORPORATION.

ADR

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

PSG

[Handwritten mark]

CV 11-06131

10 ZOOVE CORPORATION, a Delaware
11 corporation,

12 Plaintiff,

13 v.

14 STARPOUND CORPORATION, a Georgia
corporation,

15 Defendant.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

DEMAND FOR JURY TRIAL

16
17
18
19
20
21
22
23
24
25
26
27
28

1 **COMPLAINT**

2 Plaintiff Zoove Corporation ("Zoove") hereby alleges for its Complaint against
3 Defendant StarPound Corporation ("StarPound"), on personal knowledge as to its own activities
4 and on information and belief as to the activities of others, as follows:

5 **Nature of the Action**

6 1. Zoove brings this action seeking declarations (1) that its manufacture, use, sale, or
7 offer for sale of its StarStar products and services do not infringe U.S. Patent No. 8,073,784 ("the
8 '784 patent") and (2) that the '784 patent is invalid.

9 **The Parties**

10 2. Zoove is a Delaware corporation with its principal place of business at 2200 Geng
11 Road, Suite 230, Palo Alto, California 94303.

12 3. StarPound maintains records with the Georgia Secretary of State purporting to be
13 a Georgia corporation and purporting to have its principal place of business at 768 Marietta St.
14 NW, Suite 102, Atlanta, Georgia 30318. As described in Paragraph 6, StarPound has minimum
15 contacts with the State of California by doing business with and entering into an agreement with
16 Zoove.

17 **Jurisdiction**

18 4. These claims arise under the United States patent laws, 35 U.S.C. § 101 *et seq.*,
19 and seek declaratory relief for which this Court has subject matter jurisdiction pursuant to 35
20 U.S.C. §§ 271 and 281, and 28 U.S.C. §§ 1331, 1367, 1338, 2201, and 2202.

21 5. An actual justiciable controversy exists under the Declaratory Judgment Act, 28
22 U.S.C. §§ 2201 and 2202, with respect to the alleged infringement and validity of the '784
23 patent. As alleged in more detail in Paragraph 11, StarPound previously filed suit against Zoove
24 for infringement of patents that are part of the same patent family as the '784 patent. The patents
25 involved in the prior suit relate to the same technology covered by the '784 patent.

26 6. This Court has personal jurisdiction over StarPound based upon, but not limited
27 to, its minimum contacts with this State created by directing its related business activities to
28 residents of the State, including by entering into a licensing agreement with Zoove and engaging

1 in subsequent licensing negotiations with Zoove, and by previously instituting an action directed
2 against Zoove for alleged infringement of patents related to the '784 patent.

3 **Venue and Intra-District Assignment**

4 7. Venue is proper in this division pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and
5 1400(b).

6 8. Per Civil Local Rule 3-2(c), this patent infringement action may be assigned on a
7 district-wide basis.

8 **Background**

9 9. On December 6, 2011, the United States Patent and Trademark Office issued the
10 '784 patent, which is entitled "Multi-Function Code Activated Product and Service Delivery"
11 and is attached as Exhibit A hereto. StarPound claims to own the '784 patent. The '784 patent
12 relates to mobile marketing technology.

13 10. The application for the '784 patent was a continuation of an application that
14 matured into U.S. Patent No. 6,990,472, which in turn was a continuation of an application that
15 matured into U.S. Patent No. 7,865,447. U.S. Patent Nos. 6,990,472 and 7,865,447 (collectively,
16 the "Related Patents") are formally related to the '784 patent and also relate to the same mobile
17 marketing technology purportedly covered by the '784 patent.

18 11. StarPound prosecuted a prior action against Zoove with respect to the Related
19 Patents. On March 29, 2011, StarPound filed an action, *StarPound Corp. v. Zoove, Inc.*, Case
20 No. 1:11-cv-00989-SCJ ("Georgia Action"), against Zoove in the District Court for the Northern
21 District of Georgia, alleging infringement of the Related Patents. In that action, StarPound
22 accused Zoove's StarStar products and services, the same Zoove products and services at issue
23 here. On September 26, 2011, StarPound dismissed its patent infringement claims with respect
24 to the Related Patents with prejudice. *See* Dkt. No. 25.

25 12. In connection with the dismissal of the Georgia Action, StarPound stated that it
26 believed that Zoove's products and services would likely infringe the '784 patent and demanded
27 payment of a significant sum of money for a license to the then-pending application for the '784
28 patent. Zoove denies that its products or services infringe the '784 patent. Nevertheless,

1 StarPound's communications and other conduct have placed Zoove under reasonable
2 apprehension of suit by StarPound for infringement of the '784 patent.

3 **FIRST CAUSE OF ACTION**

4 **(Declaration of Non-Infringement of U.S. Patent No. 8,073,784)**

5 13. Zoove re-alleges and incorporates by reference the allegations contained in
6 paragraphs 1-12 above.

7 14. Zoove reasonably apprehends that StarPound will imminently file suit alleging
8 that Zoove's manufacture, use, sale, and/or offer for sale of its StarStar products and services
9 directly or indirectly infringe the '784 patent, either literally or under the doctrine of equivalents.

10 15. An actual and justiciable controversy exists between Zoove and StarPound with
11 respect to the '784 patent. Absent a declaration of non-infringement, StarPound will continue to
12 wrongfully assert the '784 patent against Zoove, and thereby cause Zoove irreparable injury and
13 damage.

14 16. Zoove does not infringe any valid claims of the '784 patent, either literally or
15 under the doctrine of equivalents, and Zoove has not actively induced or contributed to the
16 infringement of the '784 patent; and, Zoove is entitled to a declaration to that effect.

17 17. Zoove is further entitled to permanent injunctive relief enjoining StarPound from
18 taking any actions or making any statements inconsistent with Zoove's right to make, use, offer
19 to sell, and/or sell its StarStar products and services.

20 **SECOND CAUSE OF ACTION**

21 **(Declaration of Invalidity of U.S. Patent No. 8,073,784)**

22 18. Zoove re-alleges and incorporates by reference the allegations contained in
23 paragraphs 1-17 above.

24 19. Zoove reasonably apprehends that StarPound will imminently file suit alleging
25 that Zoove's manufacture, use, sale, and/or offer for sale of its StarStar products and services
26 directly or indirectly infringe the '784 patent, either literally or under the doctrine of equivalents.

27 20. An actual and justiciable controversy exists between Zoove and StarPound with
28 respect to the validity of the '784 patent. Absent a declaration of invalidity, StarPound will

1 continue to wrongfully assert the '784 patent against Zoove, and thereby cause Zoove irreparable
2 injury and damage.

3 21. The '784 patent is invalid and void under the provisions of Title 35, United States
4 Code, including, but not limited to, Sections 101, 102, 103, and/or 112; and, Zoove is entitled to
5 a declaration to that effect.

6 22. Zoove is further entitled to permanent injunctive relief enjoining StarPound from
7 taking any actions or making any statements inconsistent with Zoove's right to make, use, offer
8 to sell, and/or sell its StarStar products and services.

9 **Prayer for Relief**

10 WHEREFORE, Zoove requests that the Court enter judgment in its favor and
11 against StarPound as follows:

12 (a) Declaring that Zoove's manufacture, use, sale, and/or offer for sale of its
13 StarStar products and services do not infringe or contribute to or induce infringement of any
14 valid claims of the '784 patent, either literally or under the doctrine of equivalents;

15 (b) Declaring that the claims of the '784 patent are invalid and that the '784
16 patent is void;

17 (c) Declaring that this is an exceptional case under 35 U.S.C. § 285 and
18 awarding Zoove its reasonable costs and attorneys' fees;

19 (d) Permanently enjoining StarPound from litigating any action in any other
20 court against Zoove or its customers for infringement of the '784 patent; and

21 (e) Granting such other and further relief to Zoove that this Court deems just and
22 proper.

23 Dated: December 6, 2011

BINGHAM McCUTCHEN LLP

24
25
26 By: 

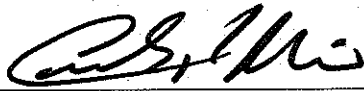
27 Carlos P. Mino
Attorneys for Plaintiff
ZOOVE CORPORATION

Jury Trial Demanded

Plaintiff Zoove Corporation hereby demands a jury trial on all issues triable to a jury in this action.

Dated: December 6, 2011

BINGHAM McCUTCHEN LLP

By: 

Carlos P. Mino
Attorneys for Plaintiff
ZOOVE CORPORATION