

OPTEX SYSTEMS, INC.	§	
<i>Plaintiff,</i>	§	
	§	
	§	
	§	
v.	§	CIVIL ACTION No. 3:12-cv-00741
	§	
	§	
SYNERGY INTERNATIONAL	§	JURY DEMANDED
OPTRONICS, LLC.	§	
<i>Defendant.</i>	§	
	§	

Plaintiff Optex Systems, Incorporated (“Plaintiff” or “Optex”) states its complaint against Defendant Synergy International Optronics, LLC (“Defendant” or “Synergy”), and alleges as follows:

1. This is an action for declaratory judgment brought by Optex pursuant to 28 U.S.C. §§ 2201-02, and the Patent Laws of the United States, 35 U.S.C. § 1 *et. seq.*, seeking a declaration that Optex does not infringe U.S. Patent No. 7,880,962 (the “’962 Patent”) attached hereto as Exhibit A, and that the claims of the ‘962 Patent are invalid.

2. Optex is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 1420 Presidential Dr., Richardson, TX 75081-2439.

3. On information and belief, Synergy is a limited liability company organized and existing under the laws of the State of Delaware, with its principal place of business at 101 Comac Street, Ronkonkoma, NY 11779.

JURISDICTION AND VENUE

4. Synergy purports to be the owner of all rights, title, and interests in and to the '962 Patent. Synergy has raised a reasonable apprehension of the filing of a lawsuit against Optex resulting in the establishment of a case or controversy between the parties in relation to the '962 Patent, as set forth below.

5. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 1367, 2201, 2202, and the Patent Laws of the United States, 35 U.S.C. § 1 *et. seq.*

6. This Court has personal jurisdiction over Synergy by virtue of the fact that Synergy sent Optex numerous letters in this judicial district whereby Synergy made allegations of patent infringement against Optex. For example, one of those communications included a draft complaint that Synergy indicated that it intended to file in the Northern District of Texas for patent infringement against Optex. Upon information and belief, Synergy may also be transacting business in Texas.

7. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1400.

BACKGROUND

8. Optex is based out of Richardson, Texas and manufactures optical sighting and weapon systems, periscopes, night vision equipment, binoculars, and various subassemblies directly for the Department of Defense and also to prime contractors.

9. Synergy purports to be the owner of all rights, title, and interests in and to the '962 Patent. On November 22, 2011, Synergy's President sent correspondence to

Optex stating that Optex's product "requires a solution which clearly infringes" the '962 Patent. *See* Exhibit B. On December 21, 2011, Synergy's legal counsel sent Optex a cease and desist letter stating that Optex's "activities constitute a serious violation of [Synergy's] rights under the United States Patent Laws" and informed Optex that unless a response was received, Synergy would "pursue all necessary measures to protect its rights." *See* Exhibit C. Additionally, Synergy sent Optex a draft complaint for patent infringement, purportedly to be filed in this district, alleging patent infringement and inducement of patent infringement of the '962 Patent by Optex. *See* Exhibit D. Since then, Synergy and Optex have engaged in good-faith negotiations of the disputes between them and such negotiations have not been fruitful. If anything, the recent negotiations appear to have strengthened Synergy's resolve to file suit against Optex.

10. The letters and subsequent communications between the parties essentially request that Optex take a license under the '962 Patent and assert that Optex is infringing the '962 Patent based, at least in part, on Optex's device that was subject of an award announcement in connection with the LAVUP Program Canada.

11. Optex has not infringed and does not infringe, either directly or indirectly, any valid and enforceable claim of the '962 Patent.

12. A substantial controversy exists between Optex and Synergy of sufficient immediacy and reality to trigger the jurisdictional requirements of the Declaratory Judgment Act.

FIRST CLAIM FOR RELIEF

Declaratory Judgment of No Infringement of Any Valid Claim of the '962 Patent

13. Optex restates, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 12 of this Complaint as if fully set forth herein,

14. Optex has not infringed, does not infringe, has not induced others to infringe, and does not contribute to the infringement, directly or indirectly, of any valid claim of the '962 Patent.

15. The acts described in the foregoing paragraphs create a substantial controversy of sufficient immediacy and reality to warrant a finding of declaratory judgment of no infringement of any valid claim of the '962 Patent.

SECOND CLAIM FOR RELIEF

Declaratory Judgment of Invalidity of the Claims of the '962 Patent

16. Optex restates, realleges, and incorporates by reference the allegations contained in paragraphs 1 through 15 of this Complaint as if fully set forth herein.

17. The claims of the '962 Patent are invalid for failure to comply with the conditions of patentability set forth in 28 U.S.C. §§ 101, 102, 103 and/or 112.

18. The acts described in the foregoing paragraphs create a substantial controversy of sufficient immediacy and reality to warrant a finding of declaratory judgment of invalidity of each claim of the '962 Patent.

PRAYER FOR RELIEF

WHEREFORE, Optex respectfully requests that judgment be entered in its favor and prays that the Court grant the following relief:

1. A declaration that Optex has not infringemnt, either directly or indirectly, any valid and enforceable claim of the '962 Patent;
2. A declaration that the claims of the '962 Patent are invalid;
3. An Order from this Court preliminarily and permanently enjoining Synergy, its agents and servants, and any and all parties acting in concert with any of them, from alleging, either directly or indirectly, that Optex infringes any valid claim of the '962 Patent;
4. An Order declaring that Optex is the prevailing party and that this is an exceptional case, awarding Optex its costs, expenses, disbursements, and reasonable attorneys' fees under 35 U.S.C. § 285 and all other applicable statutes, rules, and common law; and
5. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Optex hereby demands a trial by jury on all issues triable of right to a jury under Rule 38 of the Federal Rules of Civil Procedure.

DATED: March 12, 2012

Respectfully submitted,

/s/ Kelly J. Kubasta

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ATTORNEYS FOR

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