

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

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| _____ |) | |
| COGNEX CORPORATION |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Civil Action No. 06-cv-01040 |
| |) | |
| VCODE HOLDINGS, INC., VDATA LLC, |) | Hon. Joan N. Ericksen, presiding |
| ACACIA RESEARCH CORPORATION, |) | Mag. Judge: Hon. Jeanne J. Graham |
| and VERITEC INC., |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

PLAINTIFF'S SECOND AMENDED AND SUPPLEMENTAL COMPLAINT
WITH JURY DEMAND

Plaintiff, Cognex Corporation ("Plaintiff" or "Cognex"), as and for its Complaint against Defendants, VCode Holdings, Inc. ("VCode"), VData LLC ("VData"), Acacia Research Corporation ("Acacia") and Veritec Inc. ("Veritec") (collectively "Defendants"), alleges that:

NATURE OF ACTION

1. This is an action for a declaratory judgment arising under the patent laws of the United States, 35 U.S.C. § 101 et. seq., for a declaration that U.S. Patent No. 5,612,524, issued on March 18, 1997, entitled "Identification Symbol System and Method with Orientation Mechanism" ("the '524 patent"), is not infringed by Cognex, and/or by any of Cognex's customers for its data matrix symbol reader products, and that the '524 patent is invalid and unenforceable. A copy of the '524 patent is attached

hereto as Exhibit A. This is also an action by Cognex against Defendant Acacia for business defamation.

2. The '524 patent is directed to an identification symbol and orientation border, referred to as a data matrix symbol, for identifying items on which the symbol is used or applied, and a method and apparatus for capturing the symbol and decoding information represented by the symbol. Upon information and belief, these symbols are placed on the packaging of products and are used to identify the product and/or items contained in the packaging on which the symbol is placed.

THE PARTIES

3. Plaintiff Cognex is a corporation organized and existing under the laws of the Commonwealth of Massachusetts, located and doing business at One Vision Drive, Natick Massachusetts 01760. Cognex is the world's leading supplier of machine vision systems -- computers that can "see" -- which are used to automate a wide range of manufacturing processes where vision is required. Among the products which Cognex manufactures and sells to its customers are its data matrix symbol reader products.

4. Upon information and belief, Defendant VCode is a Minnesota corporation with its principal place of business at 2445 Winnetka Avenue, N. Golden Valley, Minnesota 55427.

5. Upon information and belief, Defendant VData is an Illinois limited liability company with a place of business at 500 Newport Center Drive, Newport Beach, California 92660.

6. Upon information and belief, Defendant Acacia is a company with a place of business at 500 Newport Center Drive, Newport Beach, California 92660.

7. Upon information and belief, Defendant Acacia is a publicly traded patent licensing and enforcement company.

8. Upon information and belief, Defendant Veritec is a company which has a place of business at 2445 Winnetka Avenue, N. Golden Valley, Minnesota 55427, and which owns VCode as wholly owned subsidiary.

9. Upon information and belief, the '524 patent and/or the applications leading to the issuance of the '524 patent were originally assigned by the inventors named therein to Defendant Veritec.

10. Upon information and belief, VCode and VData have alleged that they were subsequently assigned, and currently own together, all right, title and interest in the '524 patent.

11. Upon information and belief, Acacia has alleged that, through its division, Acacia Technologies Group, it controls the actions of VCode and VData with respect to the enforcement and licensing of the '524 patent.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction as to Counts I-III hereof pursuant to 28 U.S.C. §§1331 and 1338 with respect to the claims arising under the Patent Act, 35 U.S.C. §101 et seq., and pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201 et. seq. This Court has jurisdiction over Count V hereof pursuant to 28 U.S.C. §1367(a)

because these Counts set forth claims which are so related to the claims of Counts I-III as to form part of the same transaction, occurrence, case or controversy.

13. There is diversity of citizenship between Cognex and Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs. Therefore, this Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1332(a).

14. This Court has personal jurisdiction over each of the Defendants because a substantial part of the events giving rise to the claims asserted in this Complaint occurred in this judicial district, and Defendants are found and are doing business in this judicial district.

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

COGNEX'S RIGHT TO SEEK DECLARATORY RELIEF

16. Upon information and belief, Cognex has standing and the right to seek the declaratory relief that it seeks in this Complaint against each of the Defendants by reason of assertions of infringement of the '524 patent that have been made by or on behalf of Defendants against Cognex, and customers of Cognex who have purchased data matrix symbol reader products from Cognex and who have the right to request and/or demand that Cognex indemnify and defend them against such infringement assertions.

17. Defendants VCode and VData have asserted the '524 patent against Boston Scientific Corporation ("Boston Scientific"), who purchases data matrix symbol reader products from Cognex. Boston Scientific has been sued by VCode and VData for infringement of the '524 patent in this judicial district in an action currently pending before this Court (Case No. 04-CV-4583 JMR/FLN).

18. By letter dated January 9, 2006 to Wal-Mart Stores, Inc. (“Wal-Mart”) of Bentonville, Arkansas, Defendant Acacia has also asserted that Wal-Mart infringes one or more claims of the ‘524 patent by virtue of the sale of its Equate[®] Firming Face & Neck Cream product, which bears a two-dimensional data matrix symbol. Perrigo Corporation (“Perrigo”), a customer of Cognex for its data matrix reader products, responded to Acacia, on behalf of Wal-Mart, as the manufacturer of the accused Equate[®] product, and as the entity that applies and reads the data matrix symbol on the Equate[®] product in its manufacturing processes. Perrigo purchased from Cognex the data matrix symbol reader products that it uses to read such symbols, and has the right to request and/or demand that Cognex indemnify and defend it and its customers against such infringement assertions.

19. By letter dated January 4, 2006 to Dreyers Ice Cream (“Dreyers”), of San Jose, California, Defendant Acacia has also asserted that Dreyers infringes one or more claims of the ‘524 patent by virtue of its sale of Dreyers products which bear a two-dimensional data matrix symbol. Dreyers, a customer of Cognex, applies the data matrix symbol in its manufacturing processes, and reads such symbols using data matrix symbol reader products purchased from Cognex. Dreyers has the right to request and/or demand that Cognex indemnify and defend it against such infringement assertions, and by letter dated March 10, 2006 to Cognex, has in fact demanded that Cognex defend and indemnify Dreyers against such assertions.

20. In at least one telephone conversation between Justin Testa, Vice President of Cognex and Van Thuy Tran, Chief Executive Officer of Defendant Veritec, Veritec

has made threats of litigation on the '524 patent directly to Cognex. Specifically, in a telephone conversation with Mr. Testa on or about November 29, 2005, Ms. Tran stated that, "to avoid litigation" against Cognex and/or its customers, Cognex should take a license under the '524 patent from Veritec.

21. Upon information and belief, letters asserting infringement of one or more claims of the '524 patent have been sent by or on behalf of Defendants to more than seventy (70) companies, a large number of which are customers of Cognex for Cognex's data matrix symbol reader products. Upon information and belief, such assertions of infringement against these and other customers of Cognex will continue, to Cognex's detriment, unless and until this Court finds that the '524 patent is not infringed, is invalid and/or is unenforceable.

22. Upon information and belief, the interests of judicial economy will be served by allowing Cognex to pursue declaratory relief on behalf of its customers for its data matrix symbol products, minimizing the likelihood that multiple separate actions will be brought by or on behalf of Defendants against such customers.

23. In view of:

(a) the foregoing assertions of infringement made against Cognex, and customers of Cognex for its data matrix symbol reader products;

(b) Cognex's customers' rights to request and/or demand that Cognex defend and indemnify them against such assertions, and one such customer's demand that it be defended and indemnified for such assertions of infringement;

(c) Cognex's belief that the '524 patent is not being infringed, is invalid and is unenforceable; and

(d) the interests of judicial economy;

there is an actual controversy between Cognex and Defendants regarding the non-infringement, invalidity and unenforceability of the '524 patent which is ripe for determination by this Court.

EVENTS OCCURRING SINCE COGNEX FILED ITS ORIGINAL COMPLAINT

24. Upon information and belief, since the filing of Cognex's original Complaint in this action, an authorized representative of Acacia has informed at least two alleged infringers of the '524 patent, who have raised this action as a reason to decline or defer taking a license under the '524 patent, that Cognex, as recently as last summer, offered to buy the '524 patent (along with a related patent, U.S. Patent No. 4,924,078 (the "'078 patent'")) for an eight figure sum.

25. Specifically, in an e-mail dated April 27, 2006 to a Proctor and Gamble representative, the Acacia representative, Tisha DeRiamo, stated:

Your information regarding Cognex is very interesting. I hope their attorney told you that as recently as last summer, Cognex attempted to buy the '078 and '524 patents from Veritec for an *eight-figure purchase price*. In other words, they saw value in having the patents back then. But now, as Veritec has emerged out of bankruptcy and is able to enforce its rights regarding the patents, Cognex alleges that the patents are invalid. It's incongruous. (emphasis in original).

26. Upon information and belief, Ms. DeRiamo also stated to at least one of these alleged infringers, Allison Payment Systems, a customer of Cognex for its data matrix symbol reader products, that Veritec was in possession of a letter of intent

evidencing Cognex's alleged offer to purchase the '524 and '078 patents for an eight figure sum.

27. These statements made by Ms. DeRiamo are false. Cognex never offered to buy the '524 and '078 patents for any sum, let alone one with eight figures.

28. In the summer of 2005, while Veritec was still in bankruptcy, Veritec unilaterally proposed to sell its entire company, including its software product lines of data matrix symbols and all of its other assets, to Cognex for a sum in the eight figure area. Cognex never seriously considered the proposal or indicated in words or substance that the proposal made by Veritec was or would be acceptable. In fact, Cognex never formally responded to Veritec's unilateral proposal.

29. Cognex never signed, considered signing, or even saw, any letter of intent relating to a proposed purchase of Veritec at the time of Veritec's unilateral proposal to sell its entire company to Cognex. Acacia recently produced a rough draft of a letter that it indicated was obtained from Veritec. The letter was typed on plain white paper with the word "Cognex" typed across the top of the letter as if to simulate authentic Cognex letterhead. The letter is not authentic but rather is a total fabrication prepared by Veritec and/or Acacia without any involvement by or input from Cognex. The letter was first seen by Cognex when produced just recently by Acacia.

30. These false statements were made by Acacia for the specific purpose of deceiving Procter & Gamble, Allison Payment Systems and other companies to whom they were made into believing that Cognex has no intention of pursuing its meritorious declaratory judgment claims in this action through to a conclusion. Acacia's false

statements were made for the additional purpose of fraudulently inducing these companies to pay a fee for a license under the '524 patent notwithstanding the pendency of Cognex's claims.

COUNT I
DECLARATORY JUDGMENT OF PATENT NON-INFRINGEMENT

31. Cognex repeats and re-alleges each allegation in paragraphs 1-30 as is set forth in full herein.

32. An actual controversy has arisen and now exists between Cognex and Defendants concerning whether Cognex and/or any of its customers for its data matrix symbol reader products have infringed and are infringing any valid and enforceable claim of the '524 patent.

33. Neither Cognex nor any of its customers for its data matrix symbol reader products has ever manufactured, used, offered for sale and/or sold in the United States any products which infringe, either literally or under the doctrine of equivalents, any valid and enforceable claim of the '524 patent.

34. Neither Cognex nor any of its customers for its data matrix symbol reader products has ever read a symbol or data matrix in a manner which infringes, either literally or under the doctrine of equivalents, any valid and enforceable claim of the '524 patent.

35. Neither Cognex nor any of its customers for its data matrix symbol reader products has ever contributed to the infringement of, or induced others to infringe, any valid and enforceable claim of the '524 patent, nor has it ever done so.

36. By virtue of the foregoing, Cognex desires a judicial determination of its rights and duties and the rights and duties of its customers for its data matrix symbol reader products, with respect to any alleged infringements of the '524 patents.

37. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights and duties as determined by the Court.

38. Because Defendants and their representatives responsible for making their assertions of patent infringement knew or should have known that neither Cognex nor any of its customers for its data matrix symbol reader products infringe any valid and enforceable claim of the '524 patent, this is an exceptional case which entitles Cognex to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT II
DECLARATORY JUDGMENT OF PATENT INVALIDITY

39. Cognex repeats and re-alleges each allegation in paragraphs 1-38 as if set forth in full herein.

40. An actual controversy has arisen and now exists between Cognex and Defendants concerning whether any of the asserted claims of the '524 patent is valid.

41. The asserted claims of the '524 patent are invalid for failing to comply with one or more of the conditions and requirements of the patent laws, including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and/or 112, and/or the rules, regulations and laws pertaining thereto.

42. By virtue of the foregoing, Cognex desires a judicial determination on behalf of itself and its customers for its data matrix symbol reader products of their rights and duties with respect to the invalidity of the asserted claims of the '524 patents.

43. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

44. Because Defendants and their representatives responsible for their assertions of patent infringement, knew or should have known that the asserted claims of the '524 patents are invalid, this is an exceptional case which entitles Cognex to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT III
DECLARATORY JUDGMENT OF PATENT UNENFORCEABILITY

45. Cognex repeats and re-alleges each allegation in paragraphs 1-44 as if set forth in full herein.

46. An actual controversy has arisen and now exists between Cognex and Defendants concerning whether the '524 patent is enforceable.

47. Based on, *inter alia*, 37 C.F.R. § 1.56, inventors, attorneys who prepare and prosecute patent applications and other individuals who are substantively involved in the preparation or prosecution of a patent application have a duty of candor and good faith and must disclose all information material to patentability of an invention to the United States Patent and Trademark Office ("Patent Office") during the prosecution of applications leading to issuance of a patent.

48. The '524 patent issued from a continuation application, Ser. No. 412, 091, filed on March 28, 1995, which was a continuation of Ser. No. 08/239,932 filed May 9, 1994, which was a continuation of Ser. No. 08/097,629 filed July 27, 1993, which was a continuation of Ser. No. 07/892,409 filed June 1, 1992, which was a continuation of Ser. No. 07/423,000 filed Oct. 19, 1989, which was a continuation of Ser. No. 125,616 filed Nov. 25, 1987, which issued as the '078 patent.

49. Based on the inequitable conduct and/or fraud committed during the prosecution of the patent applications that led to the issuance of the '524 and '078 patents

by those individuals who owed a duty of candor and good faith to the Patent Office, the '524 patent is void and unenforceable.

50. The applicants of the applications that led to the issuance of the '524 and '078 patents, and/or their counsel, failed to meet the required duty of candor and good faith by submitting misleading statements and by failing to disclose material information regarding pre-critical date activities during the prosecution of the application leading to the issuance of the '078 patent, and by failing to cure such inequitable and fraudulent conduct during the prosecution of the application leading to the issuance of the '524 patent.

51. Upon information and belief, more than one year before the filing of the application from which the '078 patent issued, subject matter claimed in the '078 patent was described in printed publications including, without limitation, a brochure published by Veritec, the assignee of the '078 patent and its application, a paper by Patrick Dalton, National Sales Manager of Veritec, an article in Automatic ID News and an article in Newsweek Magazine.

52. Upon information and belief, more than one year before the filing of the application from which the '078 patent issued, subject matter claimed in the '078 patent was in public use including, without limitation, through public demonstrations of the same, by one or more of the inventors on the '078 patent and/or other representatives of Veritec, the assignee of the '078 patent and its application, at the Vision '86 Trade Show and at SCAN-TECH '86.

53. Upon information and belief, more than one year before the filing of the application from which the '078 patent issued, subject matter claimed in the '078 patent was offered for sale by one or more of the inventors on the '078 patent and/or other representatives of Veritec, the assignee of the '078 patent and its application, to many companies, including without limitation, Scientific Games Inc., General Dynamics Corporation, Prime Automation, Step Products, SOS North America, Inc., Fisher Scientific, General Motors Corporation, Saturn Corporation, AT&T, Lawrence Livermore Laboratories, ER Squibb & Sons, Intel Corporation, General Signal Corporation, and Norton & Wright, Ltd.

54. Upon information and belief, more than one year before the filing of the application from which the '078 patent issued, subject matter claimed in the '078 patent was sold by Veritec, the assignee of the '078 patent and its application, to a company located in Yorkshire, England.

55. Upon information and belief, during prosecution of the application leading to the '078 patent, the applicants, through counsel, mischaracterized Veritec's pre-critical date commercialization activities regarding the offers for sale and sale of the claimed subject matter, and mischaracterized the publication of the claimed subject matter in Newsweek Magazine.

56. Upon information and belief, Veritec filed a separate patent application on February 10, 1987 which resulted in the issuance of U.S. Patent No. 4,972,475 (the "'475 patent"). The application for the '475 patent was assigned to Veritec and directed to subject matter related to that disclosed in the application later filed on November 25,

1987 that resulted in the issuance of the '078 patent. The inventor named in the application for the '475 patent, Carl Sant'Anselmo, was also named as an inventor in the application for the '078 patent, and the prosecution of both applications was handled by the same patent law firm.

57. Upon information and belief, during the prosecution of the application for the '475 patent, applicants disclosed information regarding sales activities which took place on or about October 10, 1986. The Patent Office Examiner handling the application for the '475 patent made an adverse finding that the October 1986 sales activity could, in effect, trigger the on-sale bar under 35 U.S.C. § 102, but ultimately found that the activity was not early enough to do so in regard to the application for the '475 patent because it did not take place more than one year prior to its February 10, 1987 filing date.

58. Upon information and belief, although applicants also disclosed information regarding the October 1986 sales activity during the prosecution of the application for the '078 patent, they failed to disclose the adverse finding, made by the Patent Office Examiner handling the application for the '475 patent, to the different Patent Office Examiner handling the application for the '078 patent. That adverse finding was material to the prosecution of the application for the '078 patent because that application was filed on November 25, 1987, and the October 1986 sales activity was more than one year prior to that date. The failure to disclose the adverse finding during the prosecution of the application for the '078 patent was in violation of the applicants' duty of candor and good faith.

59. Upon information and belief, each of the facts and activities set forth above were known to applicants and/or their attorneys, but were intentionally withheld from the Patent Office during prosecution of the '078 patent, with an intent to deceive the Patent Office, in violation of the duty of candor, rendering the '078 patent unenforceable.

60. Based on the foregoing, the '078 patent was improperly issued on May 8, 1990.

61. In 1992, Veritec filed suit (the "Veritec Suit") against International Data Matrix and others ("ID Matrix") for infringement of the '078 patent, in United States District Court for the Middle District of Florida (Civil Action No. 92-1170 - CIV-T-23B).

62. During the Veritec Suit, ID Matrix filed two motions for summary judgment, one asserting invalidity of the claims of the '078 patent based upon, *inter alia*, the events and activities set forth above, and the other based upon inequitable conduct for failure to disclose such events and activities to the Patent Office, and for misrepresenting certain of those events and activities. Prior to the filing of any response by Veritec, the Veritec Suit was dismissed with prejudice pursuant to a Settlement Agreement dated May 6, 1994.

63. On November 17, 1995, late during the prosecution of the application leading to the '524 patent, applicants submitted an Information Disclosure Statement of more than 1000 pages including purported copies of the two summary judgment motions to the Patent Office, simply stating that the motions were directed to the unenforceability and invalidity of the '078 patent, and stating that the lawsuit was settled prior to any decision on the motions.

64. Thus, during the prosecution of the application leading to the '524 patent, applicants failed, among other things:

(a) to expressly advise the Patent Office of the prior failure to disclose material information regarding the pre-critical date activities with respect to subject matter claimed in that and the parent application from which the '078 patent issued;

(b) to expressly advise the Patent Office that this failure occurred;

(c) to expressly advise the Patent Office of the actual facts relating to such pre-critical date activities;

(d) to make it clear to the Patent Office that further examination of pending claims was required if any Patent Office action had been based upon the omission; and

(e) to establish patentability of the claimed subject matter on the basis of a new and factually accurate record that reflected the actual facts relating to such pre-critical date activities.

65. The acts as set forth above, and unenforceability of the '078 patent, taint and render the '524 patent unenforceable.

66. By virtue of the foregoing, Cognex desires a judicial determination on behalf of itself and its customers for its data matrix symbol reader products of their rights and duties with respect to the unenforceability of the '524 patent.

67. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

68. Because Defendants and their representatives responsible for their assertions of patent infringement knew or should have known that the '524 patent is unenforceable for at least the above-mentioned reasons, this is an exceptional case which entitles Cognex to an award of reasonable attorney fees under 35 U.S.C. § 285.

COUNT V
DEFAMATION

69. Cognex repeats and re-alleges each allegation in paragraphs 1-68 as is set forth in full herein.

70. The false statements as alleged above made by Acacia defame Cognex because of their tendency to harm Cognex's reputation by lowering Cognex in the estimation of the business community in which it operates and/or deterring third persons from associating or dealing with Cognex. The false statements undermine the credibility of Cognex in view of the published position statements it has made with respect to the invalidity and unenforceability of the '524 patent. They are also calculated to prejudice Cognex's business and cast doubt on its professed loyalty to its customers.

71. On information and belief, Acacia made the false statements as alleged above for the specific purpose, and with the specific intent, of defaming Cognex and its business.

72. As a consequence of the foregoing, Cognex's reputation in the relevant business community has been harmed, and will continue to be harmed, unless Acacia is enjoined by this Court.

PRAYERS FOR RELIEF

WHEREFORE, Cognex prays for the following relief against Defendants:

- A. For a declaration and judgment declaring that the '524 patent is not infringed by Cognex or any of Cognex's customers for its data matrix symbol reader products;
- B. For a declaration and judgment declaring that the asserted claims of the '524 patent are invalid;
- C. For a declaration and judgment declaring that the '524 patent is unenforceable based on the inequitable conduct and/or fraud on the Patent Office committed by one or more of Defendants, their predecessors in interest and/or their attorneys;
- D. For a preliminary and permanent injunction enjoining the Defendants, their officers, agents, attorneys and others in active concert therewith, from asserting any of the claims of the '524 patent against Cognex or any customer of Cognex for its data matrix symbol reader products;
- E. For a declaration and judgment declaring this case to be exceptional within the meaning of 35 U.S.C. § 285;
- F. For an award to Cognex of its costs, expenses and reasonable attorney fees as permitted by law;
- G. For judgment that Acacia has defamed Cognex causing damage to Cognex's reputation;

H. For an injunction permanently restraining and enjoining Acacia, its officers, agents, attorneys and others in active concert therewith, from defaming Cognex and/or engaging in any further deceptive trade practices in regard to Cognex;

I. For an award of presumed damages to Cognex due to Acacia's defamation;

J. For an award of special, general and punitive damages to Cognex due to Acacia's defamation; and

K. For an award to Cognex for such other and further relief as the Court may deem just and proper.

JURY DEMAND

Cognex Corporation demands a trial by jury on all issues that are so triable and that are raised by this Complaint and any answer thereto filed by or on behalf of Defendants.

Respectfully submitted,

COGNEX CORPORATION

By Its Attorneys,

Dated: June 6, 2008

/s/ Peter G. Nikolai

Thomas C. O'Konski (admitted *pro hac vice*)

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