

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

|                                    |   |                  |
|------------------------------------|---|------------------|
| _____                              | ) |                  |
| NUANCE COMMUNICATIONS, INC.,       | ) |                  |
|                                    | ) |                  |
| Plaintiff,                         | ) |                  |
|                                    | ) | Civil Action     |
| v.                                 | ) | No. 19-11438-PBS |
|                                    | ) |                  |
| OMILIA NATURAL LANGUAGE SOLUTIONS, | ) |                  |
| LTD.,                              | ) |                  |
|                                    | ) |                  |
| Defendant.                         | ) |                  |
| _____                              | ) |                  |

**MEMORANDUM AND ORDER**

May 6, 2020

Saris, D.J.

Plaintiff Nuance Communications, Inc. brings this action against Defendant Omilia Natural Language Solutions, Ltd., alleging infringement of eight patents concerning automated speech recognition and interactive voice response systems used in large scale call centers.

Omilia counter-punched with numerous counterclaims alleging, among other things, a violation of Section 2 of the Sherman Act (Count 17); a violation of Section 7 of the Clayton Act (Count 18); common law unfair competition (Count 19); tortious interference with contractual relations (Count 20); and



tortious interference with advantageous business relations (Count 21)<sup>1</sup>.

Now, Nuance moves to dismiss Omilia's antitrust and state law counterclaims (Counts 17-21), or in the alternative to stay those counterclaims pending resolution of the underlying patent infringement suit. After hearing, the Court **ALLOWS** the motion to dismiss Omilia's claim of common law unfair competition (Count 19) and **DENIES** the motion with regard to Omilia's remaining antitrust and state law counterclaims.

#### **FACTUAL BACKGROUND**

The following facts are drawn from Omilia's countercomplaint (Docket No. 44) and must be taken as true at this stage. See Newman v. Lehman Bros. Holdings Inc., 901 F.3d 19, 25 (1st Cir. 2018).

#### **I. Nuance**

Nuance develops and provides Automated Speech Recognition ("ASR") technology, which allows a machine to recognize and respond to human voice commands. Nuance's ASR software is used by enterprise-level call centers around the world.

Nuance was created in 2005 from a merger of ScanSoft and another entity named Nuance ("Pre-2005 Nuance"). ScanSoft had already acquired at least three other voice recognition firms

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<sup>1</sup> Omilia's answer labeled this claim as Count 20. Docket No. 44 at 68.

between 2001 and 2005. From 2005 to 2018, the newly formed Nuance acquired at least 16 additional companies “that developed and/or commercialized voice recognition-related technology.” Docket No. 44 ¶ 106. Nuance also acquired over 5,000 voice-recognition related patents during the 2005-2018 timeframe. Omilia alleges that, due to these corporate and intellectual property acquisitions, Nuance has maintained an international market share of over 70% since 2001.<sup>2</sup> Nuance is now the owner of one of the largest speech-recognition patent portfolios in the world.

Omilia alleges that Nuance has a strategy of “acquir[ing] actual and potential competitors through a calculated scheme of threatening to assert and/or actually asserting baseless patent infringement litigation using its massive portfolio of acquired patents to drive its competitors out of the market and/or coerce them into being acquired by Nuance.” Id. ¶ 112. Since 2011, ScanSoft/Nuance has initiated at least seventeen patent lawsuits against its competitors. At least three of these lawsuits were initiated shortly after the defendant corporation refused a buy-out offer by Nuance.

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<sup>2</sup> Omilia argues that the Court may reasonably infer that, given Nuance’s 70% international market share, Nuance’s market share within the United States is at least 70%. See Dkt. No. 80 at 44 (motion hearing transcript).

Omilia alleges that this strategy enables Nuance to “maintain supra-competitive prices for its software . . . without innovating that software, which it would have been forced to do” if it was subject to competition. Id. ¶ 114. For example, Nuance introduced a new major release related to its speech recognition software once a year between 1994 and 2005, but since 2005 has issued only three new releases. The Department of Justice (“DOJ”) Antitrust Division investigated a Nuance transaction related to the medical transcription sector in 2008 and “raised concerns” about Nuance’s proposed acquisition of a voice recognition firm in 2009. Id. ¶ 115.

## **II. Omilia’s Relationship with Nuance**

Omilia is a Cyprus-based company that sells a proprietary ASR software system for use in large enterprise call centers. Omilia resold Nuance’s ASR technology from 2007 to 2013, along with Omilia’s own proprietary natural language understanding (“NLU”) engine and dialogue manager (“DM”).

In April 2010, Omilia’s Managing Director Dimitris Vassos contacted Nuance’s CEO to discuss the possibility of an expanded partnership. Vassos met with Peter MacKinnon, the General Manager of Nuance Europe, in January 2011. During that meeting and in related emails, Vassos provided Nuance with documents describing Omilia’s proprietary NLU and DM system, known as DiaManT.

In 2012, Nuance introduced an amendment to its reseller agreement with Omilia. The amendment required Omilia to bundle Nuance's professional support services with Omilia's products and required Omilia to sell the full stack of Nuance's products, so that Omilia could not integrate Omilia's NLU with Nuance's ASR. Omilia alleges that Nuance implemented the same amendments with other resellers, in order to use its dominant position in the ASR market to gain monopoly profits in the market for professional services.

In October 2013, Nuance asked Omilia to disclose its full list of customers and projects as part of a "global partner review." Id. ¶ 125. Nuance represented that it would maintain the list in confidence. However, soon after Omilia provided the list, Nuance contacted an Omilia customer and an Omilia partner organization, allegedly to interfere with Omilia's relationships with those organizations. On October 31, 2013, Nuance served Omilia with a 90-day notice to terminate the Nuance-Omilia reseller agreement. After termination of the reseller agreement, Omilia implemented a proprietary ASR technology.

### **III. Procedural Background**

In January 2018, Nuance sent Omilia a letter demanding it to submit to an audit of all transactions and royalty payments it received from any customer since the inception of its Reseller Agreement with Nuance. Omilia refused this demand. In

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