

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

HTC CORPORATION

Plaintiff,

v.

INNOVATION SCIENCES, LLC,

Defendant

Case No.: 4:20-cv-00180

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff HTC Corporation (“Plaintiff” or “HTC”), by and through its attorneys, hereby alleges as follows:

1. Through this complaint, Plaintiff seeks declaratory judgment that U.S. Patent No. 10,104,425 (the ’425 patent) is directed to patent ineligible subject matter under 35 U.S.C. § 101.

2. The U.S. District Court for the Eastern District of Virginia has previously found substantially similar claims of patents related to the ’425 patent to be ineligible under *Alice Corp. Pty. Ltd. v. CLS Bank Int’l*, 573 U.S. 208 (2014). The Honorable Judge Liam O’Grady granted a motion to dismiss eight patents related to the ’425 patent as being ineligible under § 101 in two earlier cases, *Virginia Innovation Scis., Inc. v. HTC America, Inc.*, Civ. No. 1:16-cv-1350 (E.D. Va. Jan. 5, 2017) and *Virginia Innovation Scis., Inc. v. Amazon.com, Inc.*, Civ. No. 1:16-cv-00861 (E.D. Va. Jan. 5, 2017) (hereinafter, “*Amazon I*”). *Virginia Innovation Scis. Inc. v. Amazon.com, Inc.*, 227 F. Supp. 3d 582 (E.D. Va. 2017). That opinion was subsequently appealed and affirmed by the Federal Circuit. *Virginia Innovation Scis., Inc. v. HTC Corp.*, 718 F. App’x 988 (Fed. Cir.

2018).

3. After dismissal of these eight patents, the district court also granted summary judgment of patent ineligibility with respect to U.S. Reissue Patent No. 46,140 under § 101 and non-infringement with respect to U.S. Patent No. 8,135,398 patent in *Amazon I*. See *Innovation Scis., LLC v. Amazon.com, Inc.*, 778 F. App'x 859 (Fed. Cir. 2019). Once again, the Federal Circuit affirmed. *Id.*

4. While appeals were pending from the cases above, Virginia Innovation Sciences, Inc. (“VIS”), the predecessor entity of Defendant Innovation Sciences LLC (“Innovation Sciences” or “Defendant”), filed two more cases against HTC and Amazon in the Eastern District of Virginia, *Virginia Innovation Scis., Inc. v. HTC Corp.*, 3-17-cv-00560 (E.D. Va. 2017), and *Virginia Innovation Scis., Inc. v. Amazon.com, Inc.*, 2-17-cv-00422 (E.D. Va. 2017). After HTC sent VIS a Rule 11 letter raising concerns that (1) venue was not proper as to HTC America, Inc. following the Supreme Court’s decision in *TC Heartland LLC v. Kraft Food Grp. Brands LLC*, 137 S. Ct. 1514 (2017) and (2) VIS was asserting claims substantially similar to those found by the Eastern District of Virginia to be ineligible under § 101 (see Ex. F), VIS voluntarily dismissed these cases in October 2017 before HTC or Amazon responded to the complaint in their respective cases.

5. Nine months later, VIS filed a third case against HTC Corporation in this District, asserting infringement of another three patents, all of which are related to the eight patents previously held unpatentable under 35 U.S.C. § 101. *Virginia Innovation Scis., Inc. v. HTC Corp.*, Civ. No. 4:18-cv-00476 (E.D. Tex. filed Jul. 5, 2018), now consolidated in *Virginia Innovation Scis., Inc. v. Amazon.com, Inc.*, Civ. No. 4:18-cv-00474 (E.D. Tex. filed Jul. 5, 2018) (the “First E.D. Tex. Action”).

6. On December 6, 2018, and after defendants in related cases (including Amazon) moved to transfer the First E.D. Tex. Action to the Eastern District of Virginia, VIS filed a motion to substitute Innovation Sciences LLC for VIS on the basis of an alleged merger between VIS and Innovation Sciences, whereby VIS was terminated and Innovation Sciences was the surviving entity. The CEO and President of VIS, Dr. Tiehong “Anne” Wang, executed the merger documents on behalf of VIS and on behalf of Innovation Sciences, but under the alias “Anne Wong” as its “Manager.”

7. On December 27, 2018, HTC Corporation moved to transfer under 28 U.S.C. 1401 for *forum non conveniens*. On July 15, 2019, this Court issued an opinion denying the motions to transfer of HTC and the other consolidated defendants in the First E.D. Tex. Action. A petition for *writ of mandamus* to the Federal Circuit was denied on October 9, 2018.

8. On August 9, 2019, Innovation Sciences filed a complaint at the International Trade Commission, alleging infringement of claims 14-18 and 45-48 of U.S. Patent No. 10,104,425 (Ex. A at 1, “ITC Complaint”), and identifying, among others, HTC Corporation and HTC America, Inc. as proposed respondents. *Id.* at 2. On January 29, 2020, Defendant Innovation Sciences, LLC filed a statutory disclaimer under 37 C.F.R. § 1.321(a) with the U.S. Patent and Trademark Office disclaiming Claims 14-20 of the ’425 patent. Dkt. 15-16.

9. With respect to HTC, Innovation Sciences identified three accused devices, the HTC U11, the HTC U11 Life, and the HTC U12+ smartphones of allegedly infringing at least claims 14 and 45 of the ’425 patent. *Id.* at 13-15. Attached to the ITC Complaint as Exhibits 22 and 23, are claim charts that Defendant alleges demonstrate infringement of independent claims 45 and 14 of the ’425 patent by HTC.

10. For the reasons stated in paragraphs 2-9 herein, the threat of suit by Defendant

against HTC alleging infringement of the '425 patent is real and not idle.

11. For this action, Plaintiff seeks a declaration that the '425 patent is unpatentable as directed to patent ineligible subject matter under 35 U.S.C. § 101.

12. A number of exhibits are attached to this complaint. Those exhibits are listed below:

13. Attached hereto as Exhibit A is a true and correct copy of the public version of the Complaint filed in *Certain Wireless Communication Devices and Related Components Thereof*, No. 337-3402, filed August 9, 2019 at the International Trade Commission, with Exhibits 22-23 to the Complaint (infringement claim charts against HTC), Investigation Number 337-TA-1180.

14. Attached hereto as Exhibit B is a true and correct copy of U.S. Patent No. 10,104,425.

15. Attached hereto as Exhibit C is a true and correct copy of U.S. Patent No. 7,899,492.

16. Attached hereto as Exhibit D is a true and correct copy of U.S. Patent No. 8,903,451.

17. Attached hereto as Exhibit E is a true and correct copy of a printout of the business entity details of Virginia Innovation Sciences, Inc. from the Virginia Council for Corporations website, found at <https://cis.scc.virginia.gov/> (printed December 23, 2019).

18. Attached hereto as Exhibit F is a true and correct copy of the letter dated October 3, 2017 from counsel for HTC, Yar R. Chaikovsky, to then counsel for VIS, William E. Bradley raising Rule 11 concerns regarding the complaint filed by Mr. Bradley and VIS in *Virginia Innovation Scis., Inc. v. HTC Corp.*, 3-17-cv-00560 (E.D. Va. 2017).

19. Attached hereto as Exhibit G is a true and correct copy of the public version of the

Declaration of Tiehong “Anne” Wong a/k/a Tiehong Wang, dated May 23, 2019, in support of the Complaint filed in *Certain Wireless Communication Devices and Related Components Thereof*, No. 337-3402, filed on August 9, 2019 at the International Trade Commission (“Wong Declaration”).

20. Attached hereto as Exhibit H is a true and correct copy of Defendant’s motion to substitute party, including supporting declaration and exhibits, filed in *Virginia Innovation Scis., Inc. v. HTC Corp.*, Civ. No. 4:18-cv-00476-ALM (E.D. Tex. filed Jul. 5, 2018), Dkt. No. 15.

I. PARTIES

21. Plaintiff HTC Corporation is a Taiwanese corporation with its principal place of business at No. 88, Section 3, Zhongxing Road, Xindian District, New Taipei City 231, Taiwan.

22. Founded in 1997, HTC is a pioneer in the smartphone market, credited with many industry firsts and technology breakthroughs over the past 23 years—a history defined by innovation, design and engineering excellence, and the building of strategic partnerships to facilitate the development of an industry ecosystem. In addition to HTC smartphones, HTC has also expanded its portfolio of technical expertise to include cutting-edge virtual reality technology, as embodied by the HTC Vive virtual reality platform.

23. Defendant Innovation Sciences LLC has alleged that it is a limited liability company incorporated under the laws of the State of Texas, with an office located at 5800 Legacy Circle, Suite 311, Plano Texas 75024. Ex. A at 3.

24. Defendant Innovation Sciences LLC has alleged that Dr. Tiehong “Anne” Wong is the CEO and President of Innovation Sciences. Ex. A at 3; Ex. G at ¶ 1. In the Wong Declaration, Dr. Wong states that she has “held this position since Innovation’s formation in 2005,” presumably referring to the formation of the predecessor entity, VIS, f/k/a/ Sellerbid, Inc.

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