

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

DDC TECHNOLOGY, LLC,

Plaintiff,

v.

MERGE LABS, INC. (dba MERGE VR),

Defendant.

Case No.: 6:21-cv-00850

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff DDC Technology, LLC complains of Defendant Merge Labs, Inc. (dba Merge VR) as follows:

NATURE OF LAWSUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

THE PARTIES

2. DDC Technology, LLC (“DDC”) is a limited liability company formed and existing under the laws of the State of Delaware.

3. DDC is the named assignee of, owns all right, title and interest in, and has standing to sue for infringement of United States Patent No. 9,420,075, entitled “Virtual Reality Viewer and Input Mechanism,” which issued on August 16, 2016 (“the ‘075 Patent”) (a true and correct copy is attached as Exhibit A); United States Patent No. 9,723,117, entitled “Virtual Reality Viewer and Input Mechanism,” which issued on August 1, 2017 (“the ‘117 Patent”) (a true and correct copy is attached as Exhibit B); United States Patent No. 9,811,184, entitled “Virtual Reality Viewer and Input Mechanism,” which issued on November 7, 2017 (“the ‘184 Patent”) (a true and

correct copy is attached as Exhibit C); and United States Patent No. 10,528,199, entitled “Virtual Reality Viewer and Input Mechanism,” which issued on January 7, 2020 (“the ‘199 Patent”) (a true and correct copy is attached as Exhibit D) (collectively, the “Asserted Patents”).

4. The Asserted Patents were invented by Patrick Buckley and originally assigned to DODOcase, Inc. (“DODOcase”). DODOcase was founded by Mr. Buckley and Craig Dalton in 2010 in the basement of Mr. Buckley’s home. They started the company with the mission of making mobile device accessories that were built by local craftsman.

5. For seven years they manufactured and sold mobile device accessories made in the United States of America. Most of their products were built in a factory they built themselves in San Francisco. DODOcase sold millions of products and was recognized globally as a premium brand for mobile accessories.

6. In 2014, DODOcase anticipated a growing mobile device accessories market, particularly for affordable virtual reality accessories that worked with smartphones. Mr. Buckley, an MIT trained mechanical engineer and inventor of multiple patents, recognized some breakthrough improvements that could be made to then-existing smartphone virtual reality accessories and filed for patent protection for an innovative way to make a low-cost virtual reality input system for touchscreen devices. DODOcase launched four virtual reality smartphone accessories in 2014 and sold over one-million smartphone virtual reality viewers.

7. In 2016, DODOcase was forced to abandon the sale and production of products that used its own patented technology because of severe price pressures resulting from infringers importing competitive products.

8. On or about October 16, 2018, the Asserted Patents were assigned to DDC. As part of that assignment, DODOcase retained a financial interest in the Asserted Patents.

9. Based upon public information, Merge Labs, Inc. (doing business as Merge VR) (“Merge”) is a Delaware corporation with its principal place of business at 22211 West Interstate 10, Suite 1206, San Antonio, Texas 78257. Merge maintains a registered agent of Capitol Services, Inc. at 1675 South State Street, Suite B, Dover, Delaware 19901. Merge markets and sells virtual reality headsets under the brand name, “Merge VR.”

10. Merge makes or has made, imports, offers to sell and/or sells the Accused Products subject to this patent infringement action as set forth in more detail below.

JURISDICTION AND VENUE

11. This Court has exclusive jurisdiction over the subject matter of the Complaint under 28 U.S.C. §§ 1331 and 1338(a).

12. Personal jurisdiction is proper in this Court. Merge maintains its principal place of business in this Judicial District of Texas. Further, Merge has minimum contacts with the State of Texas, and has purposefully availed itself of the privileges of conducting business in the State of Texas, including through the sale and offer for sale of the Accused Products throughout the State of Texas and this Judicial District.

13. Venue in this judicial district is proper under 28 U.S.C. § 1400(b) because Merge resides in this Judicial District as confirmed by its principal place of business in this Judicial District of Texas.

PRIOR COMMUNICATIONS WITH MERGE

14. On April 26, 2021, DDC sent an initial letter to Merge regarding allegations of patent infringement.

15. On or around May 10, 2021, counsel purporting to represent Merge contacted DDC’s counsel by phone and stated that Merge was out of this product line.

16. DDC attempted further discussions with Merge in an effort to resolve this dispute but Merge was largely unresponsive. On July 12, 2021, then-counsel for Merge requested that the parties enter into a non-disclosure agreement (“NDA”) to facilitate exchange of information.

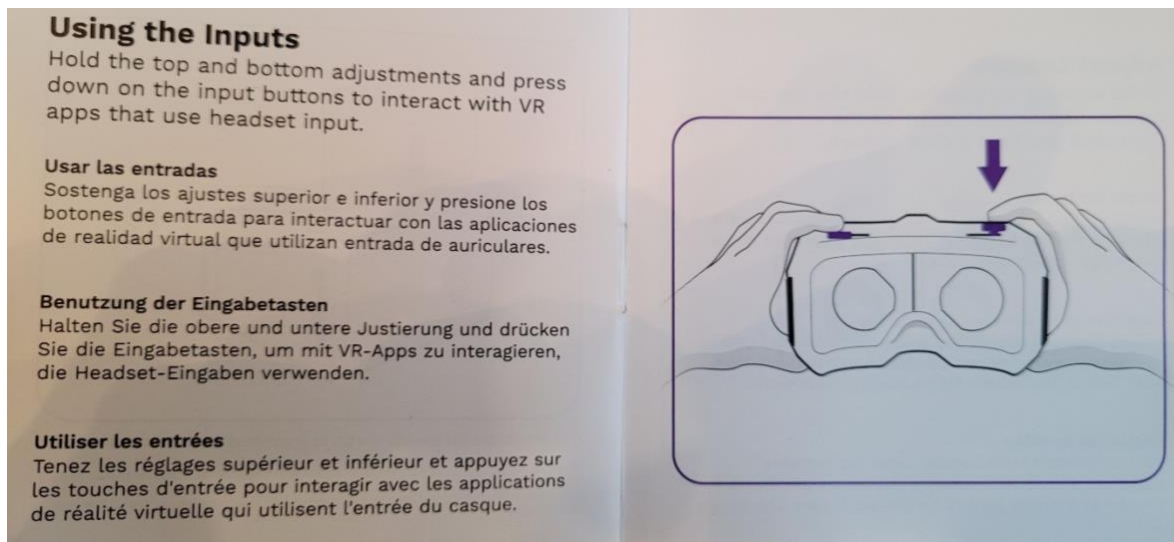
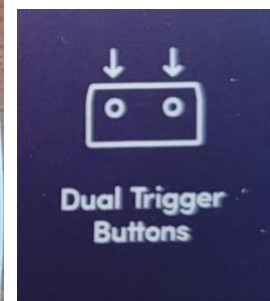
17. On July 13, 2021, DDC sent a draft NDA. On July 20, 2021, then-counsel for Merge said that he had forwarded the draft NDA to Merge and that he hoped to get it back soon.

18. Instead of receiving an update on the draft NDA, on July 27, 2021, new counsel purporting to represent Merge sent a letter contending non-infringement, invalidity, and threatening: “Should DDC pursue any claim against Merge, Merge will seek an award of its attorney’s fees in view of the clear lack of merit of any such claim, which would make any such case ‘exceptional.’”

19. In light of Merge’s numerous delays, misrepresentations, and now threat to seek attorneys’ fees, DDC files this Complaint to expedite resolution of this dispute and limit Merge’s ability to misrepresent facts pertinent to this case (including, *e.g.*, past sales, continuing sales, and the actual features of the Accused Products). Merge’s misrepresentations and continued willful infringement after notice demonstrate this case is exceptional pursuant to 35 U.S.C. § 285.

THE ACCUSED PRODUCTS

20. Merge infringed, and continues to infringe, the Asserted Patents by making, having made, selling, offering to sell, and/or importing Merge’s Virtual Reality Headsets that include “dual trigger buttons” or “input buttons” (collectively referred to herein as the “Accused Products”):



Using the Inputs

Hold the top and bottom adjustments and press down on the input buttons to interact with VR apps that use headset input.

Usar las entradas

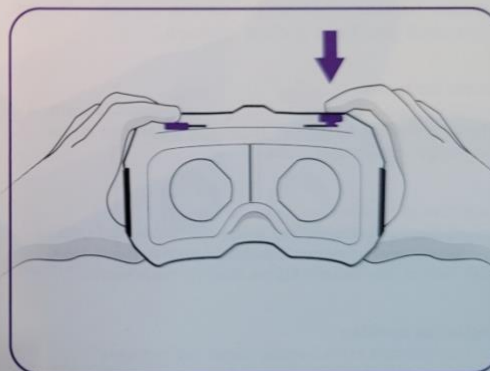
Sostenga los ajustes superior e inferior y presione los botones de entrada para interactuar con las aplicaciones de realidad virtual que utilizan entrada de auriculares.

Benutzung der Eingabetasten

Halten Sie die obere und untere Justierung und drücken Sie die Eingabetasten, um mit VR-Apps zu interagieren, die Headset-Eingaben verwenden.

Utiliser les entrées

Tenez les réglages supérieur et inférieur et appuyez sur les touches d'entrée pour interagir avec les applications de réalité virtuelle qui utilisent l'entrée du casque.



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