

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

OL2, INC.)	
)	
Plaintiff,)	Civil Action No.
)	
v.)	
)	JURY TRIAL DEMANDED
DUAL DIGITAL MEDIA LLC,)	
)	
Defendant.)	
)	

**COMPLAINT FOR DECLARATORY JUDGMENT OF
NON-INFRINGEMENT**

Plaintiff OL2, Inc. (“OL2”), by its undersigned attorneys, for its complaint against Defendant Dual Digital Media LLC (“DDM”), hereby allege the following:

Nature of the Action

1. This is an action arising under the patent laws of the United States seeking a declaratory judgment of non-infringement of U.S. Patents Number 7,925,897 (“the ‘897 patent”) (attached hereto as Exhibit A). This case is eligible for the Patent Pilot Program in the Northern District of Texas pursuant to Special Order No. 3-287.

Parties

2. OL2 is a corporation incorporated under the laws of Delaware with its principal place of business at 1091 N Shoreline Blvd, Suite 100, in Mountain View, California 94043.

3. OL2 is a leader in the cloud gaming space through its OnLive Game Service. More than fifty game publishers partner with OL2 to provide over 300 games on its service. OL2’s innovative cloud platform enables gameplay on any device.

4. OL2 conducts business in this District. Not only does OL2 have users in this District, but aspects of its infrastructure, including two server facilities, are also located in Dallas, Texas.

5. DDM is a limited liability company organized and existing under the laws of Texas, which lists its address as 1100 Judson Road, Suite 722, in Longview, Texas, 75601.

6. According to DDM's allegations in pending litigations, it is the current owner of all right, title, and interest in the '897 patent, titled "System, Method and Apparatus for Controlling the Dissemination of Digital Works" (Complaints attached hereto as Exhibits B and C). The '897 patent lists Mark Nair as the inventor, whom upon information and belief, currently resides in Amarillo, Texas. Upon information and belief, when the '897 patent was filed, Mark Nair was working at Anderson Merchandisers. Anderson Merchandiser's corporate office is in Amarillo, Texas. On June 17, 2009, the prosecuting attorney of the '897 patent, Raymond Van Dyke, alleged to the USPTO that the assignee of the entire right, title, and interest of the application that matured into the '897 patent was Anderson Merchandisers. In that submission to the USPTO, Mr. Van Dyke lists 421 E. 34th Street, Amarillo, Texas 79103 as Anderson Merchandisers' address.

Jurisdiction and Venue

7. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 *et seq.* and under the patent laws of the United States, 35 U.S.C. § 1 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

8. This Court has personal jurisdiction over DDM because DDM is a limited liability company organized and existing under the laws of Texas and because it does business in the

State of Texas with an address in Longview, Texas. In addition, DDM has filed lawsuits relating to the '897 patent in the State of Texas (Exhibits B and C).

9. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.

Existence of an Actual Controversy

10. There is an actual controversy within the jurisdiction of this Court under 28 U.S.C. §§ 2201 and 2202.

11. DDM has recently – less than two weeks ago – sued the prior provider of OL2's OnLive Game Service for infringement of the '897 patent. (Exhibit C). In that action, DDM has accused at least the same OL2 Game Service that OL2 currently makes available today. Accordingly, in a patent litigation suit, DDM is actively and directly accusing of infringement the same service that OL2 provides today.

12. Specifically, on July 2, 2013, DDM filed a patent infringement suit against OnLive, Inc., accusing it of infringing the '897 patent. (Complaint attached hereto as Exhibit C). OnLive, Inc., however, does not currently own the OnLive Game Service. OnLive, Inc. was the original owner of the OnLive Game Service; however, in August 2012, OL2 became the owner of the OnLive Game Service, as well as all relevant assets of OnLive, Inc. through a General Assignment under California law. Accordingly, OL2 is the rightful owner of these services – not OnLive, Inc.

13. In the action against OnLive, Inc., DDM alleges that OnLive, Inc.'s "sale and distribution of digital media files through its OnLive service to its end-users" infringes the '897 patent. As evidence of alleged infringement, DDM cites to webpages of OL2 that describe aspects of its OnLive Game Service. In fact, in support of DDM's infringement allegations, that Complaint cites a terms of service agreement for the OnLive Game Service that was effective as

of May 31, 2013, thus clearly accusing OL2's OnLive Game Service, although it has not sued OL2.

14. Based on DDM's allegations that at least OL2's OnLive Game Service infringes the '897 patent, and its efforts in federal court to prosecute these allegations, a justiciable controversy exists between DDM and OL2 as to whether the '897 patent is infringed by at least OL2's OnLive Game Service. Absent a declaration of non-infringement, DDM will continue to wrongfully allege that the OnLive Game Service infringes the '897 patent, and thereby cause OL2 irreparable injury and damage.

First Claim

Declaratory Judgment of Non-Infringement of the '897 Patent

15. The allegations of paragraphs 1 through 14 are incorporated herein by reference.

16. The manufacture, use, sale, offer for sale, and/or importation of OL2's OnLive Game Service does not infringe, directly or indirectly, any claim of the '897 patent.

17. An actual and justiciable controversy exists between OL2 and DDM as to whether the '897 patent is infringed by OL2's OnLive Game Service. A judicial declaration is necessary and appropriate so that OL2 may ascertain its rights regarding its manufacture, use, sale, offer for sale, and/or importation of its OnLive Game Service vis-à-vis the '897 patent.

Second Claim

Declaratory Judgment that DDM Lacks Sufficient Rights to the '897 Patent to Assert an Infringement Action

18. The allegations of paragraphs 1 through 17 are incorporated herein by reference.

19. On information and belief, DDM is not the owner of the '897 patent. For example, on June 17, 2009, the prosecuting attorney of the '897 patent, Raymond Van Dyke, alleged to the USPTO that the assignee of the entire right, title, and interest of the application

that matured into the '897 patent was Anderson Merchandisers. There is no evidence that Anderson Merchandisers divested its rights to the '897 patent.

20. An actual and justiciable controversy exists between OL2 and DDM as to whether DDM is the owner of the '897 patent.

Prayer for Relief

WHEREFORE, OL2 respectfully requests that judgment be entered in its favor and prays that the Court grant the following relief:

21. A judgment declaring that OL2 has not infringed and is not infringing, either directly or indirectly, any claims of the '897 patent and declaring that the manufacture, use, sale, offer for sale, and/or importation of OL2's OnLive Game Service does not infringe, directly or indirectly, any claims of the '897 patent.

22. A judgment declaring that DDM is not the owner of the '897 patent and does not own sufficient rights in the '897 patent to assert it in an infringement action.

23. A judgment declaring that OL2 is the prevailing party and that this is an exceptional case under 35 U.S.C. § 285 and awarding OL2 its reasonable attorneys' fees, expenses, and costs in connection with this case.

24. A judgment awarding OL2 such other relief as the Court may deem just and proper.

Dated: July15, 2013

Respectfully submitted,

/s/ Carmen E. Bremer

Carmen E. Bremer
(Texas Bar No. 24041009)
WEIL, GOTSHAL & MANGES LLP
200 Crescent Court, Suite 300
Dallas, TX 75201
Telephone: (214) 746-7700
Facsimile: (214) 746-7777

OF COUNSEL:

Edward R. Reines (CA Bar No. 135960)
pro hac pending
J. Jason Lang (CA Bar No. 255642)
pro hac pending
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
Telephone: (650) 802-3000
Facsimile: (650) 802-3100

Attorneys for OL2, Inc.