

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

LODSYS, LLC

Plaintiff,

v.

CAESARS INTERACTIVE
ENTERTAINMENT, INC.,

Defendant.

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Civil Action No. 2:13-cv-00272

JURY TRIAL DEMANDED

**DEFENDANT CAESARS INTERACTIVE ENTERTAINMENT, INC.’S ANSWER
TO PLAINTIFF’S COMPLAINT FOR PATENT INFRINGEMENT AND
COUNTERCLAIMS**

Pursuant to Rule 12 of the Federal Rules of Civil Procedure, Defendant Caesars Interactive Entertainment, Inc. (“Caesars”) files this Answer to Plaintiff Lodslys, LLC’s (“Plaintiff”) Complaint for Patent Infringement (“Complaint”). Except as is expressly admitted in this Answer, Caesars denies each allegation contained in the Complaint. Caesars reserves the right to file a motion to transfer as is appropriate.

In response to the specific allegations in the Complaint, Caesars states as follows:

THE PARTIES

1. Caesars is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint, and therefore denies the same.
2. Caesars admits the allegations set forth in Paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. Caesars admits the Complaint purports to be an action for patent infringement arising under the patent laws of the United States. Caesars admits this Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338. Caesars lacks information about the Plaintiff’s contentions sufficient to determine whether venue is proper in this District, and, on that basis,

denies the same. Caesars reserves the right to ask this Court to transfer the case to a more convenient forum. Caesars denies the remaining allegations in Paragraph 3 of the Complaint.

4. Caesars denies the allegations in Paragraph 4 of the Complaint.

INFRINGEMENT OF U.S. PATENT NO. 7,620,565

5. Caesars admits that United States Patent No. 7,620,565 (the “565 patent”) entitled “Customer-Based Product Design Module” issued on November 17, 2009. Caesars is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 5 of the Complaint, and therefore denies the same.

6. Caesars denies the allegations in Paragraph 6 of the Complaint.

7. Caesars admits that prior to filing the Complaint, Plaintiff informed Caesars of the patents-in-suit and offered to enter into a licensing agreement with Caesars. Caesars denies the remaining allegations in Paragraph 7 of the Complaint.

8. Caesars denies the allegations in Paragraph 8 of the Complaint.

9. Caesars denies the allegations in Paragraph 9 of the Complaint.

10. Caesars denies the allegations in Paragraph 10 of the Complaint.

11. Caesars denies the allegations in Paragraph 11 of the Complaint.

INFRINGEMENT OF U.S. PATENT NO. 7,222,078

12. Caesars admits that United States Patent No. 7,222,078 (the “078 patent”) entitled “Methods and Systems for Gathering Information from Units of a Commodity Across a Network” issued on May 22, 2007. Caesars is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 12 of the Complaint, and therefore denies the same.

13. Caesars denies the allegations in Paragraph 13 of the Complaint.

14. Caesars admits that before filing the Complaint, Plaintiff informed Caesars of the patents-in-suit and offered to enter into a licensing agreement with Caesars. Caesars denies the remaining allegations in Paragraph 14 of the Complaint.

15. Caesars denies the allegations in Paragraph 15 of the Complaint.

16. Caesars denies the allegations in Paragraph 16 of the Complaint.
17. Caesars denies the allegations in Paragraph 17 of the Complaint.
18. Caesars denies the allegations in Paragraph 18 of the Complaint.

JURY DEMAND

19. Caesars admits Plaintiff has demanded a jury trial on all issues triable of right by a jury. Caesars likewise demands the same.

PRAYER FOR RELIEF

20. In response to Plaintiff's Prayer for Relief, Caesars denies that Plaintiff is entitled to any relief against Caesars, including the relief sought in Paragraphs (a) through (e) of the Prayer for Relief.

AFFIRMATIVE DEFENSES

**First Affirmative Defense
(License/Exhaustion of Patent Rights and First Sale)**

21. Plaintiff's claims against Caesars are barred or limited by licenses and/or the doctrine of patent exhaustion and/or first sale.

**Second Affirmative Defense
(Non-Infringement of U.S. Patent No. 7,620,565)**

22. Caesars has not infringed, and does not infringe, directly or indirectly, either literally or by application of the doctrine of equivalents, any valid claim of the '565 patent.

**Third Affirmative Defense
(Non-Infringement of U.S. Patent No. 7,222,078)**

23. Caesars has not infringed, and does not infringe, directly or indirectly, either literally or by application of the doctrine of equivalents, any valid claim of the '078 patent.

**Fourth Affirmative Defense
(Invalidity of U.S. Patent No. 7,620,565)**

24. The claims of the '565 patent are invalid for failure to comply with the conditions and requirements for patentability specified in, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

Fifth Affirmative Defense
(Invalidity of U.S. Patent No. 7,222,078)

25. The claims of the '078 patent are invalid for failure to comply with the conditions and requirements for patentability specified in, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

Sixth Affirmative Defense
(Failure to State a Claim)

26. Plaintiff fails to state a claim against Caesars upon which relief can be granted.

Seventh Affirmative Defense
(Limitation on Damages)

27. Plaintiff's available remedies are limited or barred by 35 U.S.C. §§ 286, 287 and/or 288.

Eighth Affirmative Defense
(Equitable Defenses)

28. Plaintiff's claims are barred in whole or in part by the equitable doctrines of unclean hands, waiver, laches, and estoppel, including, but not limited to, prosecution history estoppel and/or prosecution disclaimer.

Ninth Affirmative Defense
(Prosecution Estoppel for U.S. Patent No. 7,620,565)

29. Plaintiff is estopped from construing the claims of the '565 patent in such a manner that covers Caesars' activities by reason of, among other things, statements made in the '565 patent, amendments, and/or statements made in and to the United States Patent and Trademark Office during the prosecution of the application that issued as the '565 patent, prior statements made in this or any other Court, prior rulings of this or any other Court, and/or Plaintiff's prior conduct.

Tenth Affirmative Defense
(Prosecution Estoppel for U.S. Patent No. 7,222,078)

30. Plaintiff is estopped from construing the claims of the '078 patent in such a manner that covers Caesars' activities by reason of, among other things, statements made in the '078 patent, amendments, and/or statements made in and to the United States Patent and Trademark Office during the prosecution of the application that issued as the '078 patent, prior

statements made in this or any other Court, prior rulings of this or any other Court, and/or Plaintiff's prior conduct.

COUNTERCLAIMS

Caesars further asserts the following counterclaims against Plaintiff Lodsys, LLC ("Lodsys").

THE PARTIES

34. Caesars is a Delaware corporation with its principal place of business in Las Vegas, Nevada.

35. On information and belief, Lodsys is a Texas limited liability company with its principal place of business in Marshall, Texas.

JURISDICTION AND VENUE

36. These Counterclaims arise under federal law, and this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202, and the Patent Laws of the United States, 35 U.S.C. § 1 et seq.

37. This Court has personal jurisdiction over Lodsys at least because it has submitted to the jurisdiction of this Court.

38. Venue is proper under 28 U.S.C. §§ 1391 and 1400(b) because Lodsys filed the underlying lawsuit in this Court.

39. On or about May 22, 2007, U.S. Patent No. 7,222,078 (the "'078 patent") entitled "Methods and Systems for Gathering Information from Units of a Commodity Across a Network" issued to named inventor Daniel H. Abelow.

40. On or about November 17, 2009, U.S. Patent No. 7,620,565 (the "'565 patent") entitled "Customer-Based Product Design Module" issued to named inventor Daniel H. Abelow.

41. Pursuant to 28 U.S.C. § 2201(a), an actual and justiciable controversy has arisen and exists between Caesars and Lodsys. Caesars is entitled to a judicial determination and declaration that it has not infringed, and is not infringing, the '565 patent and the '078 patent, and that the '565 patent and the '078 patent are invalid.

First Counterclaim
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,222,078)

42. The above paragraphs are incorporated by reference as if fully set forth here.

43. On or about April 16, 2013, Lodsys filed its Original Complaint for Patent Infringement asserting that Caesars infringes the '078 patent.

44. Caesars has not infringed, and does not infringe, directly or indirectly, either literally or by application of the doctrine of equivalents, any valid claim of the '078 patent.

45. An actual case or controversy exists as to these allegations, so Caesars is entitled to a judicial determination and declaration that it has not infringed, and is not infringing, the '078 patent.

Second Counterclaim
(Declaratory Judgment of Non-Infringement of U.S. Patent No. 7,620,565)

46. The above paragraphs are incorporated by reference as if fully set forth here.

47. On or about April 16, 2013, Lodsys filed its Original Complaint for Patent Infringement asserting that Caesars infringes the '565 patent.

48. Caesars has not infringed, and does not infringe, directly or indirectly, either literally or by application of the doctrine of equivalents, any valid claim of the '565 patent.

49. An actual case or controversy exists as to these allegations, so Caesars is entitled to a judicial determination and declaration that it has not infringed, and is not infringing, the '565 patent.

Third Counterclaim
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,222,078)

50. The above paragraphs are incorporated by reference as if fully set forth here.

51. On or about April 16, 2013, Lodsys filed its Original Complaint for Patent Infringement asserting that Caesars infringes the '078 patent.

52. The claims of the '078 patent are invalid for failure to meet one or more of the conditions of patentability and/or patent eligibility specified in Title 35 of the United States Code, including, without limitation, sections 101, 102, 103, and 112.

53. An actual case or controversy exists as to these allegations, so Caesars is entitled to a judicial determination and declaration that the claims of the '078 patent are invalid.

Fourth Counterclaim
(Declaratory Judgment of Invalidity of U.S. Patent No. 7,620,565)

54. The above paragraphs are incorporated by reference as if fully set forth here.

55. On or about April 16, 2013, Lodsys filed its Original Complaint for Patent Infringement asserting that Caesars infringes the '565 patent.

56. The claims of the '565 patent are invalid for failure to meet one or more of the conditions of patentability and/or patent eligibility specified in Title 35 of the United States Code, including, without limitation, sections 101, 102, 103, and 112.

57. An actual case or controversy exists as to these allegations, so Caesars is entitled to a judicial determination and declaration that the claims of the '565 patent are invalid.

PRAYER FOR RELIEF

WHEREFORE, Caesars respectfully requests the following relief:

- A. That Lodsys's Complaint for Patent Infringement be dismissed in its entirety with prejudice and that a Judgment be entered for Caesars;
- B. A judgment that Plaintiff take nothing by way of its Complaint;
- C. For a declaratory judgment that:
 - i) Caesars does not infringe, directly or indirectly, literally or by application of the doctrine of equivalents, any valid claim of U.S. Patent No. 7,222,078;
 - ii) U.S. Patent No. 7,222,078 is invalid;
 - iii) Caesars does not infringe, directly or indirectly, literally or by application of the doctrine of equivalents, any valid claim of U.S. Patent No. 7,620,565; and
 - iv) U.S. Patent No. 7,620,565 is invalid;
- D. An Order awarding Caesars its costs;
- E. An Order finding that this is an exceptional case and awarding Caesars its reasonable attorney fees pursuant to 35 U.S.C. § 285; and

F. All such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Caesars demands a jury trial, pursuant to Fed. R. Civ. P. 38(b), on all issues that may be tried by jury.

Dated: June 17, 2013

Respectfully submitted,

/s/David M. Stein

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2013, a true and correct copy of the foregoing document was served on all attorneys of record who have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ David M. Stein
David M. Stein