

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

_____)	Master Docket
IN RE: MAXIM INTEGRATED PRODUCTS,)	Misc. No. 12-244
INC., MDL NO. 2354)	MDL No. 2354
)	
This Document Relates to: 12-cv-89)	CONTI, Chief District Judge
_____)	
)	
THE PNC FINANCIAL SERVICES GROUP,)	
INC., and PNC BANK, NATIONAL)	
ASSOCIATION)	
)	
Plaintiff and Counter-Defendant,)	C.A. No. 2:12-cv-89-JFC
)	
v.)	
)	
MAXIM INTEGRATED PRODUCTS, INC.,)	
)	
Defendant and Counter-Plaintiff.)	
_____)	

FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND VIOLATIONS OF 18 U.S.C. § 1030, 18 U.S.C. § 2511, AND 17 U.S.C. § 1201

Plaintiffs, The PNC Financial Services Group, Inc. and PNC Bank, National Association (collectively “PNC”), through the undersigned attorneys, alleges the following for its First Amended Complaint against Defendant Maxim Integrated Products, Inc. (“Maxim”):

NATURE OF ACTION

1. This is an action for declaratory judgment seeking relief of non-infringement and invalidity under the patent laws of the United States, Title 35, United States Code, the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Fed. R. Civ. P. 57, the Computer Fraud and Abuse Act, 18 U.S.C. §§ 1030(a)(2)(C) and 1030(a)(4), the Federal Wiretap Act, 18 U.S.C. §§ 2511(1)(a) and 2511(2)(d), and the Digital Millennium Copyright Act, 17 U.S.C. § 1201(a)(1)(A).

THE PARTIES

2. The PNC Financial Services Group, Inc., a publicly-traded corporation listed on the New York Stock Exchange as “PNC,” is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania.

3. PNC Bank, National Association, a national banking association with its principal place of business in Pittsburgh, Pennsylvania, is a wholly-owned, indirect subsidiary of The PNC Financial Services Group, Inc.

4. Upon information and belief, Defendant Maxim is a Delaware corporation with its principal place of business at 120 San Gabriel Drive, Sunnyvale, California.

JURISDICTION AND VENUE

5. This declaratory judgment claim arises under the United States Patent Laws, 35 U.S.C. § 100 et seq., and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. Subject matter jurisdiction is proper under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030; the Federal Wiretap Act, 18 U.S.C. § 2511; the Digital Millennium Copyright Act, 17 U.S.C. § 1201; and 28 U.S.C. §§ 1331 and 1338(a). This matter presents an actual case or controversy and serves the purpose of resolving the legal rights of the parties.

6. This Court has personal jurisdiction over Maxim because Maxim has maintained continuous and systematic contacts with the Commonwealth of Pennsylvania, and Maxim has purposefully availed itself of the benefits and protections of the laws of the Commonwealth of Pennsylvania.

7. Maxim, directly and/or through its distribution networks, offers for sale, sells, and/or distributes products within the Commonwealth of Pennsylvania.

8. Upon information and belief, Maxim maintains sales offices within the Commonwealth of Pennsylvania. *See* Exhibit A, a printout from Maxim’s website

<http://www.maxim-ic.com/sales/offices/worldwide.mvp>, showing its worldwide sales offices, including two for Pennsylvania. Specifically, one of the sales offices listed on Maxim's website references a Maxim sales representative in "US - Pennsylvania (Western)."

9. Upon information and belief, Maxim engages franchised distributors within the Commonwealth of Pennsylvania. *See* Exhibit B, a printout from Maxim's website <http://www.maxim-ic.com/sales/offices/distributor/franchise.mvp>, showing three franchised distributors in Pennsylvania. Specifically, one of the Maxim franchised distributors, Avnet, Inc., has a branch office located in Wexford, Pennsylvania (in the Western District of Pennsylvania).

10. In addition, Maxim operates an interactive website through which persons in Pennsylvania can and do order products from Maxim, which are shipped to Pennsylvania. *See* <http://www.maxim-ic.com/sales/>.

11. On December 2, 2011, counsel for Maxim sent a demand letter to PNC's General Counsel in Pittsburgh, Pennsylvania, alleging patent infringement against PNC in Pennsylvania.

12. Venue is proper in this judicial district under 28 U.S.C. §§ 1391.

FACTUAL BACKGROUND

13. In the December 2, 2011 demand letter, counsel for Maxim accused PNC of infringing Maxim's patents. Specifically, Maxim alleged that PNC's mobile platforms, including multiple software applications for iPhone and other mobile devices, infringe the claims of United States Patent Nos. 5,940,510 ("510 patent"), 5,949,880 ("880 patent"), 6,105,013 ("013 patent"), and 6,237,095 ("095 patent").

14. Upon information and belief, the '510, '880, '013, and '095 patents are assigned to Maxim. True and correct copies of the four patents are attached hereto as Exhibits C, D, E, and F. True and correct assignments of the four patents are attached hereto as Exhibits G, H, I, and J.

15. In the December 2, 2011 letter, Maxim alleged that “[i]t is our belief that PNC is infringing a number of the patents within the Maxim Mobile Transaction Patent Portfolio.” Specifically, Maxim stated that PNC mobile platforms “infringe certain claims within the portfolio via direct infringement, joint infringement, contributory infringement and/or inducement.” It further stated that if it did not hear from PNC within a month (*i.e.*, by January 2, 2012), “Maxim will assume that PNC does not want to obtain a license in a non-litigious manner and will act accordingly.”

16. On December 20, 2011, in-house counsel for PNC responded to counsel for Maxim, advising that: “PNC is in the process of reviewing the claims made in your letter. Due to vacation schedules around the holidays, we will not be in a position to respond to your letter by January 2, 2012.” In response, on January 3, 2012, counsel for Maxim responded, proposing further communications in the form of a conference call on “January 24 or January 26.”

17. Maxim’s initial January 2, 2012 deadline, as later extended by counsel for Maxim to January 24 or January 26, is a clear and unmistakable threat of litigation against PNC.

18. Maxim attached to the December 2, 2011 letter nine pages of claim charts for the ’510, ’880, ’013, and ’095 patents. In particular, for claims of the ’510 patent, Maxim alleged “infringement under joint infringement”; for claims of the ’880 patent, Maxim alleged “infringement under direct infringement”; and for claims of the ’013 and ’095 patents, Maxim alleged “infringement under joint infringement, contributory infringement and inducement.”

19. Maxim also attached to the December 2, 2011 letter a 33-page document entitled “Analysis of PNC Mobile Banking Software Application.” Maxim stated that it analyzed the PNC mobile banking software application to show that “the PNC bank infringes certain claims within Maxim patents.” In addition, Maxim stated that “[t]his document is referenced by the

claim charts, provided herewith, showing the PNC mobile banking application, server structures and processes, and overall system architecture infringe a diverse set of claims within the Maxim patent portfolio.”

20. Maxim’s letter, together with the detailed attachments alleging patent infringement, is a further clear and unmistakable threat of litigation against PNC.

21. As of the filing of this First Amended Complaint, Maxim has filed suit against, or had a declaratory judgment action filed against it after threatening suit by, a total of 51 parties ("Opposing Parties"). All of these Actions, including this Action, are the subject of Multi-District Litigation No. 12-mc-00244-JFC in the Western District of Pennsylvania ("MDL Proceeding"). Maxim has alleged infringement of the '510, '880, '013 and '095 Patents by each of the Opposing Parties in the MDL Proceeding based upon each Opposing Party's mobile phone applications.

22. Attached to Maxim’s demand letter was documentation showing that Maxim had obtained proprietary information belonging to PNC by attempting to access its secured server and by decompiling its mobile application.

23. PNC, in reviewing the pre-filing investigation letter and the attachments provided by Maxim, realized that these materials contained information that was unavailable to the public and proprietary to PNC. In response to this unauthorized access, PNC spent valuable time and resources to determine the extent of the unauthorized access, including determining who accessed the site, when the site was accessed, the scope of the access, and what steps needed to be taken, if any, to safeguard against this again. The amount spent by PNC for purposes of this investigation exceeds five thousand dollars (\$5000.00).

24. PNC alleges the following on information and belief:

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