

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BAMBUSER AB,

Plaintiff,

v.

SITO MOBILE R&D IP, LLC AND SITO
MOBILE, LTD.,

Defendant.

C.A. No. 2:23-cv-21757

JURY TRIAL DEMANDED

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

1. This is an action arising under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, and the United States Patent Act, 35 U.S.C. § 1 *et seq.* Plaintiff Bambuser AB (“Bambuser”) seeks a declaration that six United States patents allegedly owned and/or controlled by Defendants (collectively, “Sito”) are invalid, not infringed, and/or otherwise unenforceable.

PARTIES

2. Plaintiff Bambuser is a corporation organized under the laws of Sweden and having a principal place of business in Stockholm, Sweden.

3. Bambuser is a state-of-the-art video commerce company that has built the world’s leading video commerce software used by companies worldwide.

4. Defendant Sito Mobile, Ltd. (“SM”) is a company organized and existing under the laws of the state of New York with its principal place of business located at 123 Town Square Place, Suite 419, Jersey City, New Jersey 07310.

5. Defendant Sito Mobile R&D IP, LLC (“SMIP”) is a limited liability company organized and existing under the laws of the state of New York with its principal place of business located at 123 Town Square Place, Suite 419, Jersey City, New Jersey 07310. Upon information and belief, Defendant SMIP is a wholly owned subsidiary of SM.

6. Defendants SMIP and SM (collectively, “Sito”), claim to own or control licensing rights to at least six (6) United States patents (the “Patents in Suit”) that Sito claims deal broadly with adaptive bitrate streaming technologies.

7. Specifically, Sito claims to own and/or control US Patent Nos. 7,191,244, 8,015,307, 8,554,940, 9,349,138, 10,735,781 and 10,769,675 (the ‘244 patent, ‘307 patent, ‘940 patent, ‘138 patent, ‘781 patent, and ‘675 patent, respectively).

8. On June 16, 2023, Sito filed a lawsuit alleging patent infringement of the Patents In Suit against SFA Holdings, Inc. That action is presently pending in the United States District Court for the Western District of Texas, and is styled *SITO MOBILE R&D IP, LLC AND SITO MOBILE, LTD v. SFA HOLDINGS, INC., (f/k/a/ SAKS INCORPORATED)*, 23-cv-00688.

9. SFA is Bambuser's customer, has been sued for its use of Bambuser supplied technology, and SFA has requested Bambuser defend and indemnify SFA Holdings with respect to said suit.

10. On or about October 6, 2023, Sito sent a draft complaint to Uniqlo USA, Inc., ("Uniqlo"), another Bambuser customer, citing the same 6 patents in suit, and threatening to sue Uniqlo for patent infringement. The accused technology is that supplied to Uniqlo by Bambuser, and Uniqlo has also sought defense and indemnity from Bambuser.

JURISDICTION AND VENUE

11. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including, but not limited to, 35 U.S.C. §§ 282, 283, and 285, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

12. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202 because, as outlined above, Sito has sued or threatened to sue customers of Bambuser for infringement of the Patents in Suit, and Bambuser is thus faced with defending against the same patent infringement claims in multiple jurisdictions.

13. Based upon at least the foregoing, there is an actual and judiciable dispute between Bambuser and Sito concerning infringement, validity and enforceability of the Patents in Suit.

14. This Court has personal jurisdiction over Sito because Sito has its principle place of business in this District from which it regularly conducts its business.

15. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391 and/or 1400(b).

COUNT I – Declaratory Judgment of Invalidity and Non-Infringement of the ‘244 Patent

16. Bambuser incorporates herein by reference all preceding paragraphs as if set forth herein in full.

17. The claims of the ‘244 patent are invalid under one or more sections of 35 U.S.C. §§102, 103, and/or 112. Such claims are either anticipated or rendered obvious by, at least, the following prior art patents and/or published patent publications, either alone or in obvious combination(s): 6,389,467; 6,385,596; 6,760,916; 5,931,901; 6,715,126; 2004/0015703; 2004/0083273.

18. In addition, one or more claim limitations of the claims in suit are not present, either literally or by equivalents, in the Bambuser supplied products and processes that Bambuser’s customers use and which Sito has accused of infringing the Patents in Suit.

19. As a result of the foregoing, and to avoid further imminent harm to its business and harassment of its customers with meritless infringement claims, Bambuser is entitled to a declaratory judgment that its products and services,

supplied to its customers and accused of infringement, do not infringe any valid claim of the '244 patent.

COUNT II – Declaratory Judgment of Invalidity and Non-Infringement of the '307 Patent

20. Bambuser incorporates herein by reference all preceding paragraphs as if set forth herein in full.

21. The claims of the '307 patent are invalid under one or more sections of 35 U.S.C. §§102, 103, and/or 112. Such claims are either anticipated or rendered obvious by the following prior art patents and/or published patent publications, either alone or in obvious combination: 6,389,467; 6,385,596; 6,760,916; 5,931,901; 6,715,126; 2004/0015703; 2004/0083273.

22. In addition, one or more claim limitations of the claims in suit are not present, either literally or by equivalents, in the Bambuser supplied products and processes that Bambuser's customers use and that Sito has accused of infringing the patents in suit.

23. As a result of the foregoing, and to avoid further imminent harm to its business and harassment of its customers with meritless infringement claims, Bambuser is entitled to a declaratory judgment that its products and services, supplied to its customers and accused of infringement, do not infringe any valid claim of the '307 patent.

COUNT III – Declaratory Judgment of Invalidity and Non-Infringement of the ‘940 Patent

24. Bambuser incorporates herein by reference all preceding paragraphs as if set forth herein in full.

25. The claims of the ‘940 patent are invalid under one or more sections of 35 U.S.C. §§102, 103, and/or 112. Such claims are either anticipated or rendered obvious by the following prior art patents and/or published patent publications, either alone or in obvious combination: 6,389,467; 6,385,596; 6,760,916; 5,931,901; 6,715,126; 2004/0015703; 2004/0083273.

26. In addition, one or more claim limitations of the claims in suit are not present, either literally or by equivalents, in the Bambuser supplied products and processes that Bambuser’s customers use and that Sito has accused of infringing the Patents in Suit.

27. As a result of the foregoing, and to avoid further imminent harm to its business and harassment of its customers with meritless infringement claims, Bambuser is entitled to a declaratory judgment that its products and services, supplied to its customers and accused of infringement, do not infringe any valid claim of the ‘940 patent.

COUNT IV – Declaratory Judgment of Invalidity and Non-Infringement of the ‘138 Patent

28. Bambuser incorporates herein by reference all preceding paragraphs as if set forth herein in full.

29. The claims of the '138 patent are invalid under one or more sections of 35 U.S.C. §§102, 103, and/or 112. Such claims are either anticipated or rendered obvious by the following prior art patents and/or published patent publications, either alone or in obvious combination: 6,389,467; 6,385,596; 6,760,916; 5,931,901; 6,715,126; 2004/0015703; 2004/0083273.

30. In addition, one or more claim limitations of the claims in suit are not present, either literally or by equivalents, in the Bambuser supplied products and processes that Bambuser's customers use and that Sito has accused of infringing the Patents in Suit.

31. As a result of the foregoing, and to avoid further imminent harm to its business and harassment of its customers with meritless infringement claims, Bambuser is entitled to a declaratory judgment that its products and services, supplied to its customers and accused of infringement, do not infringe any valid claim of the '138 patent.

COUNT V – Declaratory Judgment of Invalidity and Non-Infringement of the '781 Patent

32. Bambuser incorporates herein by reference all preceding paragraphs as if set forth herein in full.

33. The claims of the '781 patent are invalid under one or more sections of 35 U.S.C. §§102, 103, and/or 112. Such claims are either anticipated or rendered obvious by the following prior art patents and/or published patent publications, either alone or in obvious combination: 6,389,467; 6,385,596; 6,760,916; 5,931,901; 6,715,126; 2004/0015703; 2004/0083273.

34. In addition, one or more claim limitations of the claims in suit are not present, either literally or by equivalents, in the Bambuser supplied products and processes that Bambuser's customers use and that Sito has accused of infringing the Patents in Suit.

35. As a result of the foregoing, and to avoid further imminent harm to its business and harassment of its customers with meritless infringement claims, Bambuser is entitled to a declaratory judgment that its products and services, supplied to its customers and accused of infringement, do not infringe any valid claim of the '781 patent.

COUNT VI – Declaratory Judgment of Invalidity and Non-Infringement of the '675 Patent

36. Bambuser incorporates herein by reference all preceding paragraphs as if set forth herein in full.

37. The claims of the '675 patent are invalid under one or more sections of 35 U.S.C. §§102, 103, and/or 112. Such claims are either anticipated or rendered obvious by the following prior art patents and/or published patent publications,

either alone or in obvious combination: 6,389,467; 6,385,596; 6,760,916; 5,931,901; 6,715,126; 2004/0015703; 2004/0083273.

38. In addition, one or more claim limitations of the claims in suit are not present, either literally or by equivalents, in the Bambuser supplied products and processes that Bambuser's customers use and that Sito has accused of infringing the Patents in Suit.

39. As a result of the foregoing, and to avoid further imminent harm to its business and harassment of its customers with meritless infringement claims, Bambuser is entitled to a declaratory judgment that its products and services, supplied to its customers and accused of infringement, do not infringe any valid claim of the '675 patent.

JURY TRIAL

40. Bambuser herein demands trial by jury on all Counts and defenses triable by a jury.

PRAYER FOR RELIEF

WHEREFORE, Bambuser respectfully requests judgment in its favor and against Sito, as follows:

A. Declaring that the Bambuser products and services that Sito has accused of infringement, including but not limited to those used by SFA Holdings and Uniqlo USA Inc., do not infringe, induce infringement or contribute to the

infringement of, either literally or by equivalents, any valid claim of any of the Patents in Suit;

B. Declaring all claims of each of the Patents in Suit invalid;

C. Declaring that this case is exceptional and awarding Bambuser its expenses, costs and attorneys' fees pursuant to 35 U.S.C. §285; and

D. Granting to Bambuser any other and further relief as the Court deems just, proper, or equitable.

Dated: November 1, 2023

KAPLAN BREYER SCHWARZ, LLP

/s/Jeffrey I. Kaplan

Jeffrey I. Kaplan

197 State Route 18, Ste 3000

East Brunswick, NJ 08816

jkaplan@kbsiplaw.com

ZUKERMAN GORE BRANDEIS &
CROSSMAN, LLC

John K. Crossman (*pro hac vice* to be
filed)

Eleven Times Square

New York, New York 10036

212 223 6700

jcrossman@zukermangore.com

Attorneys for Plaintiff Bambuser AB