

District of Colorado

LANDMARK TECHNOGY, LLC
Defendant

Jury Trial: ☐ YES ☒ NO

COMPLAINT

Plaintiff Pugs Holdings, LLC (“Pugs”) files this Complaint against Defendant Landmark Technology, LLC (“Landmark”) and hereby alleges, on knowledge of its own actions and on information and belief as to all other matters, as follows:

Introduction

1. Landmark, a non-practicing entity, erroneously seeks license fees from Pugs for alleged patent infringement of United States Patent No. 6,289,319 (“the ‘319 Patent”). Pugs brings this action seeking: (1) a declaration that it has not infringed and does not infringe any valid and enforceable claim of the ‘319 Patent; and (2) a judgment that Landmark’s attempts to enforce and license the ‘319 Patent is in bad faith and constitutes unfair and deceptive trade practices.

Parties

2. Plaintiff Pugs Holdings, LLC is a Delaware limited liability company with its principal place of business at 401 S. Wilcox Street, Suite 250, Castle Rock, Colorado, 80104.

3. On information and belief, Defendant Landmark is a Delaware limited liability company with its principal place of business at 329 Laurel Street, San Diego, California 92102.

Jurisdiction and Venue

4. The court has original and exclusive subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this Complaint states claims arising under an Act of Congress relating to patents, 35 U.S.C. § 271.

5. The Court also has original and exclusive subject matter jurisdiction over these claims because this Complaint arises under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202 *et seq.*, based on the declaratory judgment sought by Pugs due to Landmark's meritless accusations of alleged patent infringement and Landmark's pattern of actual litigation concerning U.S. Patent No. 6,289,319 ("the '319 Patent").

6. Landmark has a well-documented history of sending demand letters accusing companies of infringing Landmark's rights regarding the '319 Patent and related patents, offering to provide the alleged infringers a non-exclusive license to use the patent(s) at issue for a fee and suing these companies if they do not pay Landmark for a license to use the subject patent(s).¹ Pugs received such a demand letter from Landmark in September 2017. Landmark's demand letter to Pugs, both separately and taken together with Landmark's extensive history of filing patent infringement lawsuits regarding the '319 Patent and other related patents, exemplifies the actual

¹ Landmark has been involved in over one hundred lawsuits in which Landmark alleges patent infringement. Additionally, Landmark has filed at least 33 lawsuits related to alleged infringement of the '319 Patent since September 2008.

case or controversy under 28 U.S.C. §§ 2201 and 2202 arising from Landmark's demand letter to Pugs.

7. This Court has personal jurisdiction over Landmark. Upon information and belief, Landmark conducts substantial business in Colorado, including regularly doing or soliciting business, and engaging in other persistent courses of conduct. Upon information and belief, Landmark has purposefully and repeatedly directed its activities at residents of Colorado, including sending letters to numerous other companies based in Colorado, asserting infringement of the '319 Patent and demanding payment of money. Thus, Landmark has sufficient minimum contacts with the State of Colorado to satisfy the Colorado long-arm statute (§13-1-124, C.R.S.) and Constitutional due process requirements because Landmark regularly conducts business activities in Colorado.

8. Venue is proper in the District of Colorado, pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b), as a substantial part of the events giving rise to the claims in the Complaint occurred in Colorado and Pug's principal place of business is in Colorado.

Factual Background

A. General Background

9. Upon information and belief, Landmark does not make, use, or sell any product or services of its own, but is solely involved in the business of patent licensing through the threat of litigation. Thus, Landmark is an entity commonly referred to as a patent troll.

10. On information and belief, Landmark's sole business model and activity involves sending letters accusing others of patent infringement and threatening litigation.

11. On information and belief, Landmark implies that it is the exclusive licensee of the '319 Patent with the right to enforce the '319 Patent. Landmark, by its own admission, files patent

infringement lawsuits against companies that refuse to pay the license fee sought by way of Landmark's licensing demand letters. See e.g., *Landmark Technology LLC v. Gensco, Inc.*, No. 3:17-cv-015872 (W.D. Wash. 2017); *Landmark Technology LLC v. Anthony-Thomas Candy Co.*, No. 3:17-cv-00908 (S.D. Ohio 2017); *Landmark Technology LLC v. Totally Chocolate, LLC*, No. 2:17-cv-01396 (W.D. Wash. 2017); *Landmark Technology LLC v. Southern Motorcycle Supply, Inc.*, No. 3:17-cv-01836 (S.D. Cal. 2017); *World Pantry.com, Inc. v. Landmark Technology LLC*, 3:17-cv-04837 (N.D. Cal. 2017); *Paint Sundry Solutions, Inc. v. Landmark Technology LLC*, 2:17-cv-01073 (W.D. Wash. 2017); *Landmark Technology LLC v. Jones Soda Co.*, No. 2:17-cv-00978 (W.D. Wash. 2017); *Landmark Technology LLC v. Launchpad, Inc.*, No. 3:17-cv-00892 (S.D. Cal. 2017); *Antennas Direct v. Landmark Technology LLC*, No. 4:17-cv-01399 (E.D. Mo. 2017); *Landmark Technology LLC v. GourmetGiftBaskets.com*, No. 3:17-cv-00851 (S.D. Cal. 2017); *Build A Sign, LLC v. Landmark Technology LLC*, No. 1:17-cv-00227 (W.D. Tex. 2017); *Collin Street Bakery v. Landmark Technology LLC*, 3:17-cv-00256 (N.D. Tex. 2017); *Fabletics, LLC v. Landmark Technology LLC*, No. 3:17-cv-000 (N.D. Cal. 2017); *Triad Catalog Co. L.L.C. v. Landmark Technology LLC*, No. 4:16-cv-01690 (E.D. Mo. 2016); *Tatcha, LLC v. Landmark Technology LLC*, No. 3:17-cv-04831 (N.D. Cal. 2016); *Landmark, LLC v. G. Stage Love.com Inc.*, No. 3:16-cv-00760 (S.D. Cal. 2016); *Landmark, LLC v. Canada Drugs L.P.*, No. 3:16-cv-00558 (S.D. Cal. 2016); *Adore Me, Inc. v. Landmark Technology LLC*, No. 1:15-cv-09800 (S.D.N.Y. 2015); *LGS Yoox Corp. v. Landmark Technology LLC*, No. 1:15-cv-03893 (S.D.N.Y. 2015); *Landmark Technology, LLC v. Ace Limited and Ace USA, Inc.*, No. 6:15-cv-00437 (E.D. Tex. 2015); *Landmark Technology, LLC v. Assurant, Inc.*, No. 6:15-cv-00076 (E.D. Tex. 2015); *Landmark Technology, LLC v. YOOX Corp.*, No. 6:15-cv-00069 (E.D. Tex. 2015); *Landmark Technology, LLC v. The Michaels Companies, Inc.*, No. 6:15-cv-00068 (E.D. Tex. 2015);

Landmark Technology, LLC v. Ace INA Holdings, Inc., No. 6:15-cv-00067 (E.D. Tex. 2015);
Landmark Technology, LLC v. Zillow, Inc., No. 6:15-cv-00004 (E.D. Tex. 2015).

12. On information and belief, Landmark has filed over one hundred (100) lawsuits against various companies asserting claims based on the ‘319 Patent and patents related to the ‘319 Patent.

13. None of the numerous lawsuits involving Landmark’s attempts to enforce the ‘319 Patent and other patents has made it as far as claim construction. In fact, very few Defendants have ever filed an answer. The remaining cases appear to have been resolved prior to the answer filing deadline.

14. Landmark also appears to systematically and quickly settle litigation prior to any potentially damaging rulings on the baselessness of Landmark’s claims, thereby preserving its ability to extract license fees from other companies moving forward.

15. Upon information and belief, Landmark makes settlements quickly and confidentially to prevent future targets from learning of the baselessness of Landmark’s claims.

16. Similar fact patterns to the one here, where a party’s business model involves filing numerous patent infringement suits, and leveraging the high cost of litigation to extract settlements, and where the patentee has no intention of testing the merits of their claims, especially under 35 U.S.C. §101, have been found “exceptional,” so as to support the award of fees and costs, under the standard for an award of fees articulated in *Octane Fitness*, 134 S. Ct. 1749 (2014). See *SFA Sys., LLC v. Newegg Inc.*, 793 F.3d 1344, 1350 (Fed. Cir. 2015) (finding that a pattern of litigation abuses characterized by the repeated filing of patent infringement actions for the sole purpose of forcing settlements, with no intention of testing the merits of one’s claims, is relevant to a district court’s exceptional case determination under 35 U.S.C. § 285); *Rothchild Connected*

Devices Innovation, LLC v. Guardian Prot. Servs., Inc., 858 F.3d 1383 (Fed. Cir. 2017) (finding that patent owners' pattern of litigation practices and willful ignorance of invalidating circumstances could warrant an award of fees under 35 U.S.C. § 285); *Shipping and Transit LLC v. Hall Enterprises, Inc.*, No. 2:16-cv-06535 (C.D. Cal. 2017) (finding a pattern of filing serial litigation and voluntarily dismissing cases prior to judgment on validity justifies an award of attorney fees under 35 U.S.C. § 285).

B. Landmark's Demand to Pugs

17. Landmark has accused Pugs of infringing the '319 Patent. Attached hereto as **Exhibit "A"** is a copy of Landmark's Demand Letter, dated September 15, 2017 (the "Demand Letter").

18. In its Demand Letter, Landmark demanded payment of \$55,000 without providing any copies of the '319 Patent.

19. Landmark also demanded payment of \$55,000 without providing the name and address of the patent holder.

20. Landmark then demanded payment of \$55,000 through deceptive and misleading information regarding the importance of the '319 Patent as a "pioneer patent."

21. The Demand Letter does not include an element by element, or any other type of analysis or description of Pugs services alleged to infringe, but simply contends that "Pugs Holdings, LLC ("Pugs") data processing systems, particularly <https://www.pugsgear.com/cart.php?suggest=f4169619-a5cc-46e7-9af4-7ea85ea28ba7>," infringe the '319 Patent. See Ex. A at 1; see also *Id.* at 2 ("[T]he specific functionalities implemented by Pugs using their servers and devices interfaced to Pugs' web servers constitutes use of the technology taught within the meaning of Claim 1 of the '319 Patent.").

22. Each of these actions by Landmark constitute bad faith assertions of patent infringement under §§6-12-101, *et seq.*, including, but not limited to §6-12-102, C.R.S.

23. Landmark's Demand Letter concludes by offering Pugs the option to pay \$55,000 for a non-exclusive license to Landmark's patent portfolio, including the '319 Patent, or be sued by Landmark. See Ex. A at 1. Landmark is quick to point out that their offer "will not be available in the event of litigation" and gives Pugs fifteen (15) days within which to respond to the Demand Letter. See Ex. A at 2.

24. Nowhere in the Demand Letter did Landmark indicate that its offer was negotiable. Upon information and belief, this tactic is designed to extract payment from letter recipients, knowing that the payment would be significantly less expensive than defending against even a questionable patent case in court.

25. The letter also makes a number of misleading statements regarding the prominence of the '319 Patent.

C. The '319 Patent

26. The '319 Patent, entitled "Automated Business and Financial Transaction Processing System," issued on or about September 11, 2001. The named inventor of the '319 Patent is Lawrence B. Lockwood ("Lockwood"). Attached hereto as **Exhibit "B"** is copy of the '319 Patent.

27. The '319 Patent contains a single independent patent claim ("Claim 1") whose field of invention is an "automatic data processing system for processing business and financial transactions between entities from the remote sites." See Ex. B, Col. 6, lns. 7-9. In fact, as the Patent Specification states: "The principal object of this invention is to provide an economical means for screening loan applications." See Ex. B, Col. 1, lns. 45-46 (emphasis added). Other

objects of the invention include: “a system that ties together financial institution data processing, the computer services of a credit reporting bureau, and a plurality of remote terminals. Each remote terminal displays the live image of a fictitious loan officer who helps the applicant through an interactive series of questions and answers designed to solicit from the applicant all the information necessary to process his loan application. See Ex. B, Col. 1, ln. 62- Col. 2, ln 2. (emphasis added).

D. The ‘319 Patent’s Prosecution History

28. Lockwood, the patent “Applicant,” filed a “continuation-in-part” patent application in 1986 which essentially continued and amended an original patent application he had filed in 1984. This continuation-on-part patent application was rejected by the U.S. Patent and Trademark Office (USPTO) in 1988 and subsequently abandoned. Thereafter, between 1988 and 1993, Lockwood sequentially filed four additional “continuation: patent applications, each having essentially identical patent specifications as the 1986 filing. All of these applications were also rejected by the USTPO and subsequently abandoned. Finally, on November 30, 1994, Lockwood filed yet another patent application, U.S. application no. 08/347,270 (the “270 Application”), which uses the same patent specification he had used in his five previous patent applications. The ‘270 Application ultimately became the ‘319 Patent.

29. When Lockwood filed the ‘270 Application in 1994, he called the application an “Automatic Loan Processing Terminal System.” The USPTO examiner initially rejected the ‘270 Application under 35 U.S.C. § 101 as being directed to a method of doing business and not patentable subject matter; under 35 U.S.C. § 112 as being indefinite, non-enabling, and lacking specification support; and under 35 U.S.C. § 103 as being just an obvious combination of prior technology or “prior art.” See April 20, 1995 Office Action, pp. 2-8.

30. On October 17, 1995, Lockwood filed an amendment to the '270 Application ("270 Amendment") changing the title of the application to "Automatic Business and Financial Transaction Processing System," deleting certain claims and adding other claims in response to the examiner's rejection. As to the 103 prior art rejection, Lockwood's '270 Amendment stated that the claimed system had:

The novel capability of processing the answer given by the operator in combination with prior answers and other data to formulate or compose a new inquiry, or a response; and to make on-site decisions about the next operational step. The net effect and result being the operator's responses create a highly individualized, unique, 'one-of-a-kind' question and answer presentation.

September 19, 1995. Amendment, pp. 8-9 (emphasis added).

31. In short, Lockwood's '270 Amendment argued that the claimed system included an on-site terminal or kiosk which had the "intelligence" or processing capability to present a highly individualized, unique, "one-of-a-kind" question and answer presentation to the user as one would need in a complex transaction, such as application for a loan. Lockwood argued that this concept could be found in the "means for fetching additional inquiring sequences" of Claim 1, which was a required feature or limitation of the terminal according to Claim 1. See September 19, 1995 Amendment, p. 10 (emphasis added).

32. In response to Lockwood's amendments and arguments, the USPTO's examiner once again rejected the application under 35 U.S.C. § 112; and under 35 U.S.C. § 103 for being unpatentable due to being a combination of prior art.

33. Lockwood appealed the USPTO examiner's final rejection to the USPTO's Board of Patent Appeals and Interferences "(the Board)"; and filed an Appeal Brief on June 27, 1996 (the "Appeal Brief"). In this Appeal Brief, Lockwood introduced the well-known concept of "forward chaining" for the first time in order to argue that the claimed invention was more than a combination of prior art. Specifically, Lockwood's Appeal Brief argues:

The instant invention employs a type of problem solving technique known in the art as “forward-chaining” (“IBM Dictionary”, page 285). Forward-chaining is a way to emulate human deductive or data-driven reasoning. . . . Forward-chaining is generally associated with knowledge bases that have large numbers of possible solutions, and are frequently used when data is the starting point for solving a problem. Examples of applications that are associated with forward-chaining are planning, designing and forecasting.

Appeal Brief, pp. 30-31.

34. Additionally, Lockwood distinguished the ‘270 Application’s claims from the prior art by asserting that the prior art only taught menu systems that operated in a rigid, “pre-ordained” manner. See Appeal Brief, pp. 22-23. In contrast to the “rigid, pre-ordained,” menu systems described in the prior art references, Lockwood argued that his claimed invention had ability to dynamically “interact” with a customer, via a simulated loan officer displayed on a screen, rather than follow such rigid search and retrieval routines “and through which the user could be provided only with the exact thing that he had entered on the keypad.” See Appeal Brief, pp. 25-26.

35. The USPTO’s examiner filed an answer to the appeal; and in response, Lockwood filed a supplemental brief including an expert’s declaration. On September 27, 2000, the Board reversed the examiner’s rejection for two reasons, including, in pertinent part, their belief that “the examiner has failed to establish a *prima facie* case of obviousness with regard to claimed subject matter.” BPAI Decision on Appeal, Appeal No. 1997-2678, Sep. 27, 2000, pp. 7-8. Thus the ‘319 Patent issued on September 11, 2001.

36. On May 5, 2003, a third party filed a request for *ex parte* reexamination of certain claims of the ‘319 Patent (US Control No. 90/006,623). The USPTO’s reexamination examiner rejected all of the ‘319 Patent’s claims under 35 U.S.C. §102, as being nothing more than existing technology; and under 35 U.S.C. § 103, as being a combination of existing technology, based on new prior art references submitted with the reexamination request. In response, Lockwood filed an amendment to the ‘319 Patent adding 22 new dependent claims. In doing so, Lockwood argued

that with respect to the 102 and 103 rejections the newly cited prior art was no better than the previous cited art argued:

What distinguishes the structure recited in Claim 1 from Lockwood and from the above cited prior art is first, the architecture of the system, and second, the novel and non-obvious ability of the terminal to formulate independently from the central processor, intelligent inquiries based on a combination of prior and newly acquired information.

May 16, 2005, Amendment and Response, pp. 6-7.

37. Lockwood also argued that in the newly cited prior art: “All inquiries are formulated by the mainframe and simply displayed on the terminal video screen at the store.” May 16, 2005, Amendment and Response, p. 8 (emphasis added). In other words, in order to get around the rejection, Lockwood characterized his concept as requiring the subject terminal to make the intelligent decisions itself – not the mainframe computer or server.

38. After an additional rejection and further supplemental submissions, Lockwood was ultimately successful in convincing the USPTO examiner that the cited prior art was no better than the previously cited prior art; and therefore, the old claims were confirmed and the new claims were allowed. The reexamination certificate was issued July 17, 2007.

39. On September 14, 2012, another third party filed a second request for *ex parte* reexamination of certain claims of the ‘319 Patent (US Control No. 90/006,623). Although the ‘319 Patent’s claims were ultimately re-confirmed, this examiner went into a lengthy claim construction analysis of a critical element of claim 1 to support his reasons for confirmation. This examiner stressed the fact that “as stated by the Federal Circuit, claims must be construed in light of the intrinsic evidence which includes the claim, the written description *and the prosecution history*. See Notice of Intent to Issue Ex Parte Reexamination Certificate – Statement of Reasons for Patentability and/or Confirmation, Dec. 18, 2012, p. 4 – (emphasis added).

40. Additionally, in a section titled, "Claim Language Interpretation," the Examiner explained how he interpreted the elements of Claim 1:

The "means-plus-function" limitation "means for fetching additional inquiring sequences in response to a plurality of said data entered through said means for entering and in response to information received from said central processor" in now interpreted to require the function . . . [a terminal] programmed to fetch additional inquiring sequences such as additional questions or options to a user in response to user entry of data and information receipt from the central processor, i.e. "forward chaining" in response to user entry data and information receipt from the central processor as characterized by the Patent Owner.

Id., p. 7 – (emphasis added)

41. Thus, while the second reexamination confirmed the patentability of Claim 1 of the '319 Patent, the scope of Claim 1 was clearly interpreted as requiring the use of "forward chaining" performed at the terminal "as characterized by the patent owner." This claim interpretation is clear from the record. As limited by this claim element interpretation of Claim 1, a reexamination certificate issued on January 9, 2013.

E. The '319 Patent's Only Independent Claim

42. The sole remaining independent claim of the '319 Patent, Claim 1 reads as follows:

1. An automatic data processing system for processing business and financial transactions between entities from remote sites which comprises:
a central processor programmed and connected to process a variety of inquiries and orders transmitted from said remote sites;
said central processor including:
means for retrievably storing said information:
at least one terminal at each of said remote sites including a data processor and operational sequencing lists of program instructions;
means for remotely linking said terminal to said central processor and for transmitting data back and forth between said central processor and said terminal;
said terminal further comprising means for dispensing information and services for at least one of said entities including:

a video screen;

means for holding operational data including programming, information, and inquiring sequences of data;

means for manually entering information;

means for storing information, inquiries and orders for said transactions entered by one of said entities via said means for manually entering information, and data received through and from said central processor;

on-line means for transmitting said information, inquiries, and orders to said central processor;

on-line means for receiving data comprising operator-selected information and orders from said central processor via said linking means;

means for outputting said informing and inquiring sequences on said video screen in accordance with priest routines and in response to data entered through said means for entering information;

means for controlling said means for storing, means for outputting, and means for transmitting, ***including means for fetching, additional inquiring sequences*** in response to a plurality of said data entered through said means for entering and in response to information received from said central processor;

said informing sequences including directions for operating said terminal, and for presenting interrelated segments of said operational data describing a plurality of transaction operations;

said programming sequences including means for interactively controlling the operation of said video screen data receiving and transmitting means; and for selectively retrieving said data from said means for storing;

said means for storing comprising means for retaining said operational sequencing list and means responsive to the status of the various means for controlling their operation;

said central processor further including:

means responsive to data received from one of said terminals for immediately transmitting selected stored information to said terminal; and

means responsive to an order received from a terminal for updating data in said means for storing;

whereby said system can be used by said entities, each using one of said terminals to exchange information, and to respond to inquiries and orders instantaneously and over a period of time.

'319 Patent, Claim 1 (emphasis added).

43. Accordingly, in order to infringe the claims of the '319 Patent, if it were valid, which Pugs does not concede, Pugs would have to use a system which includes ALL of the above claim elements of Claim 1. Specifically, in addition to the other numerous claim elements, the system would have to use a "means for fetching additional inquiries" which, as explained above, must include the use of a dynamic and sophisticated forward chaining analysis performed at the terminal. Accordingly, an infringing party must utilize much more than a predetermined menu tree system when potential customers contact their website.

F. Pugs' Website Does Not Infringe the '319 Patent

44. Pugs does not infringe Claim 1, or any other valid claim of the '319 Patent because Pugs' services or websites do not practice *every* limitation of Claim 1.

45. Upon information and belief, Landmark failed to undergo any type of infringement analysis prior to sending its Demand Letter.

46. As noted previously, the Demand Letter does not include an element by element description, or any other type of analysis of Pugs' products, services, or technology believed to infringe. Instead, it simply includes a link for Pugs website, <https://www.pugsgear.com/cart.php?suggest=f4169619-a5cc-46e7-9af4-7ea85ea28ba7>.

47. Upon information and belief, Landmark never accessed or used Pugs' website.

48. Upon information and belief, Landmark did not perform any due diligence of Pugs' systems or services prior to writing to Pugs threatening legal action and demanding payment of \$55,000.00.

49. Pugs primarily sells its product through convenience stores and other traditional "brick and mortar" locations. Its website is primarily a tool for branding and product promotion though Pugs does sell a small sampling of its products through its website www.pugsgear.com;

and ships products to customers who place orders. In order for a customer to access www.pugsgear.com, the customer (or the computer manufacturer) must first choose to install third party internet browser software (such as: Explorer, Firefox, or Safari) onto the customer's computer or device. A customer can the "visit" Pugs' website by typing a URL into a text box of the browser. This customer action causes the customer's internet browser to send a request to the third-party's web server which hosts Pugs' website via standard internet connection. In response to the request from the customer's browser, a third-party web server causes Pugs' simple menu driven website to be displayed onto the customer's device. The customer then interacts with the rigid, pre-ordained menus displayed on the customer's devices on order to select and order products. Pugs' websites are static websites which make use of rigid menu like interfaces so that every user has the same sales experience.

50. Pugs' websites are hosted at a third party's web server farm. Pugs does not own, operate, or host its own web servers nor a web server farm. Furthermore, Pugs clearly does not own, operate or control the computers or mobile devices its customers use to access its websites. Moreover, said computers and mobile devices, which the '319 Patent would call terminals, do not utilize any dynamic and sophisticated forward chaining analysis when interacting with Pugs' websites. In fact, no server, computer, or device uses forward chaining technology in any way to display or host Pug's websites.

51. Landmark alleges the Pugs' servers constitute an infringing use of Claim 1 of the '319 Patent when customers use devices (i.e. terminals) to interact with Pugs' web servers. Pugs does not infringe any valid and enforceable claim of the '319 Patent for reasons including, but not limited to, the fact the terminals (i.e., customer devices) accessing Pugs' websites are not owned nor used by Pugs. Moreover, even if such terminals were owned or used by Pugs, such terminals

do not utilize any forward chaining technology, which is required by even a cursory construction of Claim 1 of the '319 Patent; and no server, computer or device associated with Pugs uses forward chaining technology at all, which is required by Claim 1 of the '319 Patent.

Count I – Declaration of Non-Infringement
(U.S. Patent No. 6,289,319)

52. Pugs restates and incorporates by reference the allegations in paragraphs 1 through 51 of this Complaint as if fully set forth herein.

53. Pugs has not infringed and does not infringe any valid and enforceable claim of the '319 Patent, whether literally or under the doctrine of equivalents. Additionally, Pugs is not liable for any induced, contributory, divided, or other indirect infringement of any valid enforceable claim of the '319 Patent. Neither Pugs, its customers who access its website, nor anyone associated with Pugs, utilize all of the elements of the claims of the '319 Patent.

54. There exists a substantial, real and immediate controversy between Pugs and Landmark concerning Pugs' alleged infringement of the '319 Patent, which Pugs denies; and this controversy warrants the issuance of a declaratory judgment. The controversy arises from a Demand Letter in which Landmark claims Pugs infringes at least claim 1 of the '319 Patent; and providing Pugs an option to pay for a license to Landmark's patent portfolio, including the '319 Patent, within fifteen (15) days of the Demand Letter being sent or be sued. Landmark's Demand Letter alone, and in combination with Landmark's widespread campaign of filing patent infringement lawsuits against licensing targets that refuse to pay the license fee Landmark demands, clearly demonstrated Landmark's intent to seek erroneously enforce the '319 Patent against Pugs.

55. Thus, a judicial declaration is necessary and appropriate so that Pugs may ascertain its rights regarding the '319 Patent. Pugs therefore seeks a judicial declaration that Pugs does not directly, or indirectly, or otherwise infringe any valid and enforceable claim of the '319 Patent.

Count II – Federal Unfair and Deceptive Trade Practices

(15 U.S.C. §45(A)(1))

56. Pugs restates and incorporates by reference the allegations in paragraphs 1 through 55 of this Complaint as if fully set forth herein.

57. Landmark's allegations are objectively baseless given a lack of actual allegations related to the specific area in which Pugs' products, services, or technology allegedly infringes.

58. Landmark failed to reasonably construe the claims, then failed to compare said claims to Pugs' product, services or technology, but instead only generally points to Pug's static webpage to allege that webpage somehow infringes the claims of the '319 patent.

59. Landmark's infringement allegations are objectively baseless given the deceptive and misleading information regarding the importance of the '319 Patent as a "pioneer patent." In fact, the '319 patent relates to outdated and obsolete technology for screening loan applications.

60. Landmark's infringement allegations are objectively baseless given that even a cursory review of Pugs website would show that Pugs does not practice *every* limitation of the '319 Patent.

61. By knowingly threatening litigation in bad faith, Landmark engages in unfair methods, and unfair or deceptive acts or practices in or affecting commerce.

62. Landmark systematically ends litigation involving the '319 Patent prior to claim construction thereby artfully preserving its ability to argue for plain language scope of an irrelevant patent.

63. Landmark's actions constitute bad-faith patent litigation because Landmark knows, or should know, that the patent scope relates to outdated and irrelevant technology which is no longer used by today's technology and cannot possibly be infringed.

64. Pugs seeks an injunction and such other equitable relief as deemed appropriate.

WHEREFORE, Pugs Holdings, LLC respectfully requests the following relief:

A. A declaration that Pugs Holdings, LLC has not infringed and does not infringe, directly or indirectly, any valid and enforceable claim of the '319 Patent, whether literally or under the doctrine of equivalents;

B. An order declaring that this is an exceptional case and awarding Pugs Holdings, LLC its costs, expenses, disbursements and reasonable attorney's fees under 35 U.S.C. § 285;

C. An order declaring Landmark's conduct as unlawful, unfair and deceptive trade practices;

D. An order awarding Pugs all damages caused by Landmark's unlawful acts, including punitive damages and pre- and post-judgment interest, as provided by law; and

E. All such other and further relief, both at law and in equity, which this Court deems just and proper.



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