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REFLECTIONS BY RUTH D/B/A
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

GARFUM.COM CORPORATION

Plaintiff,

v.

REFLECTIONS BY RUTH D/B/A
BYTEPHOTO.COM

Defendant.

Case No. 1:14-cv-05919-JEI-KMW

**ANSWER AND COUNTERCLAIM
OF DEFENDANT**

DEFENDANT'S ANSWER

Defendant and Counterclaimant Reflections by Ruth d/b/a Bytphoto.com (“Reflections by Ruth” or “Defendant”), hereby Answers the Complaint for Patent Infringement filed against it by Plaintiff and Counterdefendant Garfum.com Corporation (“Garfum” or “Plaintiff”). Allegations not expressly admitted herein are denied.

NATURE OF THE ACTION

1. Reflections by Ruth admits that this is a patent infringement action alleging infringement of U.S. Patent. No. 8,209,618, that appears on its face to be entitled “Method of Sharing Multi-Media Content Among Users in a Global Computer Network”. Reflections by Ruth further admits that what purports to be a copy of the ’618 patent was attached to the complaint as Exhibit A. Reflections by Ruth further admits that Garfum seeks injunctive and monetary relief but denies that Garfum is entitled to any relief sought in this action for alleged infringement of the ’618 patent. Reflections by Ruth is without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations of paragraph 1, and on that basis, denies them.

PARTIES

2. Reflections by Ruth is without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2, and on that basis, denies them.

3. Reflections by Ruth admits that it is a sole proprietorship organized and existing under the laws of the State of Pennsylvania, with its principal place of business located at 4905 Davis Drive, Doylestown, Pennsylvania 18902 and can be served at that address. For purposes of this action only, Reflections by Ruth also admits that it conducts business in the State of New Jersey.

JURISDICTION AND VENUE

4. Admitted.

5. For purposes of this action only, Reflections by Ruth admits the allegations of paragraph 5.

6. Reflections by Ruth admits that its websites are made available in the United States, and the State of New Jersey. Reflections by Ruth admits on information and belief that residents of the State of New Jersey use Reflections by Ruth's products and services in the State of New Jersey. Other than so admitted, denied.

7. For purposes of this action only, Reflections by Ruth admits that venue is proper in this district pursuant to 28 U.S.C. §§1391 and 1400(b) and that Reflections by Ruth has transacted business in this district. Reflections by Ruth denies the remaining allegations of paragraph 7.

COUNT I—INFRINGEMENT OF U.S. PATENT 8,209,618

8. Reflections by Ruth incorporates by reference its responses to the allegations in the preceding paragraphs.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Admitted that Reflections by Ruth has not received any authority and/or license from Plaintiff, but denied that any authority and/or license is required. Except as so admitted, Reflections by Ruth denies the allegations of paragraph 13.

14. Denied.

15. Denied.

JURY DEMAND

To the extent a response is required to Plaintiff's jury demand, Reflections by Ruth admits that Garfum has requested a trial by jury.

PRAYER FOR RELIEF

To the extent a response is required to Plaintiff's Prayer for Relief, Reflections by Ruth denies that Plaintiff is entitled to relief or judgment against Reflections by Ruth, and further responds as follows:

- A. Garfum is not entitled to a declaration or judgment that Reflections by Ruth has infringed the '618 patent because Reflections by Ruth has not infringed the '618 patent;
- B. Garfum is not entitled to a permanent injunction or any other equitable relief against Reflections by Ruth because, among other things, Reflections by Ruth has not infringed the '618 patent;

- C. Garfum is not entitled to an award of damages or any other legal relief against Reflections by Ruth because, among other things, Reflections by Ruth has not infringed the '618 patent;
- D. Garfum is not entitled to a finding of willful infringement or any enhanced damages against Reflections by Ruth because, among other things, Reflections by Ruth has not infringed the '618 patent;
- E. Garfum is not entitled to a finding of willful infringement or any enhanced damages against Reflections by Ruth because, among other things, Reflections by Ruth has not infringed the '618 patent; and
- F. Garfum is not entitled to any further relief against Reflections by Ruth because, among other things, Reflections by Ruth has not infringed the '618 patent.

WHEREFORE, Reflections by Ruth demands judgment in its favor, and against plaintiff, together with costs, fees and other appropriate relief.

AFFIRMATIVE DEFENSES

First Affirmative Defense

(Failure to State a Claim)

The Complaint fails to state any claims against Reflections by Ruth upon which relief can be granted.

Second Affirmative Defense

(Non-Infringement)

Reflections by Ruth has not infringed, and does not infringe, any claim of the '618 patent literally, under the doctrine of equivalents, directly, contributorily, by inducement, or in any other manner.

Third Affirmative Defense

(Invalidity)

The claims of the '618 patent are invalid for failing to meet the conditions for patentability set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

Fourth Affirmative Defense

(No Immediate or Irreparable Injury)

Garfum is not entitled to injunctive relief at least because: (1) Garfum has not suffered nor will it suffer irreparable harm because of Reflections by Ruth's conduct; (2) any harm to Garfum would be outweighed by the harm to Reflections by Ruth; (3) Garfum has an adequate remedy at law even if it were to prevail in this action; and (4) the public interest would not be served by an injunction in favor of Garfum.

Fifth Affirmative Defense

(Estoppel)

Garfum's claims are barred against Reflections by Ruth under the doctrine of prosecution history estoppel and/or equitable estoppel.

Reservation of Rights to Assert other Defenses

Reflections by Ruth reserves the right to assert any other defenses that discovery may reveal.

DEFENDANT'S COUNTERCLAIMS

Defendant and Counterclaimant Reflections by Ruth d/b/a Bytphoto.com ("Reflections by Ruth" or "Defendant"), by and through its attorneys, asserts the following counterclaims against Plaintiff and Counterdefendant Garfum.com Corporation ("Garfum" or "Plaintiff").

Reflections by Ruth, by and through its attorneys, further asserts the following counterclaims against Garfum.

THE PARTIES

1. Reflections by Ruth is a sole proprietorship existing under the laws of the State of Pennsylvania, with its office and principal place of business located at 4905 Davis Drive, Doylestown, Pennsylvania, 18902.

2. On information and belief, Garfum is a corporation organized under the laws of the State of New Jersey, with its principal place of business at 22 South Hope Chapel Road, Jackson, New Jersey, 08527.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331, 1338, 2201, and 2202.

4. This Court has personal jurisdiction over Garfum by virtue of its having consented to the jurisdiction of this Court by filing its Complaint here.

5. Venue is proper in this District over Garfum pursuant to 28 U.S.C. § 1391(b), (c), and (d).

FACTUAL BACKGROUND

6. United States Patent No. 8,209,618 is entitled “Method of Sharing Multi-Media Content Among Users in a Global Computer Network” (the “’618 patent”), and issued on June 26, 2012 to Michael Garofalo.

COUNT ONE

(Declaratory Judgment of Non-Infringement of the ’618 Patent)

7. Reflections by Ruth re-alleges and incorporates by reference the allegations of paragraphs 1-15 of its Answer, each of its Affirmative Defenses, and paragraphs 1-6 of its Counterclaims as though fully set forth herein.

8. Based on Garfum's filing of this action and Reflections by Ruth's Affirmative Defenses, an actual controversy has arisen and now exists between Garfum and Reflections by Ruth as to the alleged infringement of the '618 patent.

9. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Reflections by Ruth requests a judgment from this Court finding that all the claims of the '618 patent are not infringed, directly or indirectly, by Reflections by Ruth.

COUNT TWO

(DECLARATORY JUDGMENT OF INVALIDITY AND/OR UNENFORCEABILITY OF THE '618 PATENT)

10. Reflections by Ruth incorporates allegations of paragraphs 1-9 of its Counterclaims as though fully set forth.

11. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, Reflections by Ruth requests a judgment from this Court finding that all the claims of the '618 patent are invalid and/or unenforceable for failure to meet the conditions of patentability set forth in the Patent Laws of the United States, including but not limited to §§ 101, 102, 103, 112, and 282.

DEMAND FOR A JURY TRIAL

Reflections by Ruth hereby demands a trial by jury for all issues so triable.

PRAYER FOR RELIEF

Wherefore Reflections by Ruth requests that the Court enter judgment for Reflections by Ruth, and award it the following relief.

- a. Dismiss Garfum's Complaint with prejudice and find that Garfum takes nothing by its claims against Reflections by Ruth;
- b. Enter judgment in favor of Reflections by Ruth and against Garfum, on the Complaint;
- c. Declare that Reflections by Ruth has not infringed the '618 patent, or any valid claim therein;
- d. Declare that all claims of the '618 patent are invalid;
- e. Enjoin Garfum, its assigns, and all those in privity therewith, from asserting any claim of the '618 patent against Reflections by Ruth or any of its customers or suppliers;
- f. Find this case an exceptional case and award Reflections by Ruth its attorneys' fees and costs under 35 U.S.C. § 285 and/or Rule 11 of the Federal Rules of Civil Procedure; and
- g. Grant Reflections by Ruth such other and further relief as the Court deems appropriate and just under the circumstances.

Dated: February 13, 2015

By: /s/ Frank L. Corrado
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