

THE HONORABLE MARY ALICE THEILER

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARRIVALSTAR S.A. and
MELVINO TECHNOLOGIES LIMITED,

Plaintiffs,

v.

CENTRAL PUGET SOUND REGIONAL
TRANSIT AUTHORITY d/b/a Sound Transit,

Defendant.

Civil Action No. 2:12-cv-977-MAT

**ANSWER, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIMS**

DEMAND FOR JURY TRIAL

Defendant Central Puget Sound Regional Transit Authority (“Defendant” or “Sound Transit”), by and through its undersigned counsel, hereby responds to the *Complaint* filed by Plaintiffs ArrivalStar S.A. (“ArrivalStar) and Melvino Technologies Limited (“Melvino”).

For ease of reference, the paragraph numbering herein tracks that of the complaint. Insofar as the complaint contains allegations or inferences, whether direct or indirect, that are not specifically admitted herein, they are denied.

NATURE OF THE ACTION

1. The allegations set forth in this paragraph 1 of the complaint are conclusions of law, to which no response is required. To the extent a further response is required, Defendant admits that the complaint purports to state claims for patent infringement arising under the patent laws of the United States. Defendant denies the remainder of the allegations set forth in paragraph 1 of the complaint.

THE PARTIES

2. Defendant lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 2 of the complaint and, therefore, denies the same.

3. Defendant admits that a copy of United States Patent No. 7,030,781 (“The ‘781 patent” or “patent-in-suit”) was attached to the complaint as Exhibit A. Defendant lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the other allegations set forth in paragraph 3 of the complaint and, therefore, denies the same.

4. Defendant lacks personal knowledge or information sufficient to admit or form a belief as to the truth of the allegations set forth in paragraph 4 of the complaint and, therefore, denies the same.

5. Defendant is a regional transit authority created pursuant to RCW 81.104 and 81.112. Defendant admits that Defendant’s principal place of business is at 401 South Jackson Street, Seattle, Washington 98104 and that it transacts business in this judicial district. Defendant denies the remaining allegations of Paragraph 5 of the Complaint and specifically denies that Defendant has infringed the ’781 patent.

6. Admitted.

ALLEGED PATENT INFRINGEMENT

7. Denied.

8. Denied.

DEFENSES AND AFFIRMATIVE DEFENSES

Sound Transit incorporates by reference herein each and every allegation above.

1. Plaintiffs’ complaint fails to state a claim upon which relief can be granted.
2. Plaintiffs lack standing to assert the cause of action asserted in the Complaint.
3. Plaintiffs are not the real party in interest to the asserted patent and contract rights.
4. Plaintiffs’ complaint is defective as one or more necessary and/or indispensable parties is missing.

1 5. Defendant has not infringed any claim of the '781 patent, directly, contributorily
2 or by inducement.

3 6. The claims of the '781 patent are invalid.

4 7. Plaintiffs' alleged rights in the '781 patent are unenforceable.

5 8. Plaintiffs' claims are barred by the doctrine of patent misuse.

6 9. Plaintiffs' claims are barred by the doctrine of patent exhaustion.

7 10. Plaintiffs' claims are barred by Plaintiffs' own fault and wrongdoing.

8 11. Plaintiffs' claims for damages are precluded or limited by 35 U.S.C. § 287.

9 12. To the extent Plaintiffs have suffered any damages, such damages were caused by
10 Plaintiffs' own fault, nonfeasance, and malfeasance arising out of their acts and omissions.

11 13. To the extent Plaintiffs have suffered any damages, such damages are barred or
12 limited by Plaintiffs' failure to timely mitigate.

13 14. To the extent Plaintiffs have suffered any damages, such damages are offset and
14 set off.

15 15. Plaintiffs' claims are barred by the equitable doctrines of laches, estoppel,
16 acquiescence, waiver, ratification, and unclean hands.

17 16. Plaintiffs are not entitled to enhanced or increased damages because Defendant
18 has not engaged in conduct that meets the applicable standard for willful infringement.

19 17. Plaintiffs are not entitled to injunctive relief because Plaintiffs have not suffered
20 any immediate or irreparable non-monetary injury.

21 Defendant reserves the right to assert additional and revised defenses discovered during
22 the pendency of this action.

23 COUNTERCLAIMS

24 For its Counterclaims, Defendant/Counterclaimant Sound Transit alleges as follows:

25 PARTIES

26 1. Sound Transit is a regional transit authority created pursuant to RCW 81.104 and
81.112 with its principal place of business in Seattle, Washington. Sound Transit designs,

1 builds, operates, and maintains high capacity public transit services in the Sound Transit district,
2 which is generally the more populated areas of Snohomish, King, and Pierce Counties in the
3 State of Washington.

4 2. Upon information and belief, Counterclaim-Defendant ArrivalStar S.A. is a
5 corporation organized under the laws of Luxembourg with its principal place of business in
6 Luxembourg.

7 3. Upon information and belief, Counterclaim-Defendant Melvino Technologies
8 Limited is a corporation organized under the laws of the British Virgin Islands with its principal
9 place of business in the British Virgin Islands.

10 **JURISDICTION AND VENUE**

11 4. These claims are brought pursuant to the Declaratory Judgment Act pursuant to
12 28 U.S.C. §§ 2201 and 2202 seeking adjudication that U.S. Patent No. 7,030,781 (the “‘781
13 patent”) is not infringed, invalid, and/or unenforceable.

14 5. The Court has personal jurisdiction over Counterclaim-Defendants by virtue of
15 their having filed this action in this judicial district and by virtue of their filing of previous
16 lawsuits against other entities they allege to have infringed the ‘781 patent in this judicial district.
17 The Court has jurisdiction over these counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338 in
18 that this action arises under the patent laws of the United States and an actual controversy exists
19 between the parties.

20 6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(b)
21 and because Counterclaim-Defendants brought the underlying action for alleged infringement of
22 the patent-in-suit by Sound Transit in this judicial district.

23 **ACTUAL CASE AND CONTROVERSY**

24 7. Counterclaim-Defendants have alleged that, collectively, they own all right title
25 and interest in the ‘781 patent.

26 8. Counterclaim-Defendants have charged Sound Transit with infringement of the
‘781 patent, which has been denied by Sound Transit.

1 9. There is a substantial, justiciable, and continuing controversy between the parties
2 as to the non-infringement, invalidity, and unenforceability of the '781 patent.

3 10. Sound Transit and the public interest will be damaged by the charges of
4 infringement and will be irreparably harmed if the existing controversy between the parties is not
5 promptly adjudicated.

6 **COUNT I**

7 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

8 11. Sound Transit reasserts and incorporates by reference the allegations in the above
9 paragraphs as though fully set forth herein.

10 12. Sound Transit has not made, used, sold, offered for sale, or imported into the
11 United States any product or practiced any method that infringes any claim of the '781 patent.

12 13. Sound Transit has not provided, sold or supplied any non-staple article or
13 component specially adapted to practice an invention that infringes any claim of the '781 patent.

14 14. Sound Transit has not taught, aided or abetted others in practicing an invention
15 that infringes any claim of the '781 patent.

16 15. Sound Transit has not infringed — directly, contributorily, or by inducement —
17 any claim of the '781 patent.

18 16. As a result, Sound Transit requests a declaratory judgment that it has not infringed
19 any claim of the '781 patent.

20 **COUNT II**

21 **DECLARATORY JUDGMENT OF PATENT INVALIDITY**

22 17. Sound Transit reasserts and incorporates by reference the allegations in the above
23 paragraphs as though fully set forth herein.

24 18. The claims of the '781 patent are invalid under the United States patent laws, 35
25 U.S.C. § 1 *et seq.*, including for failure to meet the requirements for patentability as set forth in,
26 *inter alia*, 35 U.S.C. § 102 and the corresponding patent regulations set forth in the Code of
Federal Regulations, 37 C.F.R. § 1.1, *et seq.*

19. The claims of the '781 patent are invalid under the United States patent laws, 35

1 U.S.C. § 1 *et seq.*, including for failure to meet the requirements for patentability as set forth in,
2 *inter alia*, 35 U.S.C. § 103 and the corresponding patent regulations set forth in the Code of
3 Federal Regulations, 37 C.F.R. § 1.1, *et seq.*

4 20. The claims of the '781 patent are invalid under the United States patent laws, 35
5 U.S.C. § 1 *et seq.*, including for failure to meet the requirements for patentability as set forth in,
6 *inter alia*, 35 U.S.C. §112 and the corresponding patent regulations set forth in the Code of
7 Federal Regulations, 37 C.F.R. § 1.1, *et seq.*

8 21. The claims of the '781 patent are invalid under the United States patent laws, 35
9 U.S.C. § 1 *et seq.*, including for failure to meet the requirements for patentability as set forth in,
10 *inter alia*, 35 U.S.C. § 116 and the corresponding patent regulations set forth in the Code of
11 Federal Regulations, 37 C.F.R. § 1.1, *et seq.*

12 22. As a result, Sound Transit requests a declaratory judgment that the claims of the
13 '781 patent are invalid.

14 COUNT III

15 DECLARATORY JUDGMENT OF PATENT UNENFORCEABILITY

16 23. Sound Transit reasserts and incorporates by reference the allegations in the above
17 paragraphs as though fully set forth herein.

18 24. Pursuant to their '781 patent monetization and licensing campaign, Counterclaim-
19 Defendants have filed over 25 separate lawsuits and threatened and licensed over 66 separate
20 entities representing, *inter alia*, the airlines, railroad, travel, trucking, freight, logistics,
21 communications, software, and public transportation industries. Counterclaim-Defendants '781
22 patent monetization and licensing campaign is based on an overbroad interpretation of the patent
23 claims.

24 25. Counterclaim-Defendants have misused the '781 patent by wrongfully alleging
25 and asserting claims of infringement against Sound Transit and third parties when they knew or
26 should have known that such claims were not supported by a proper infringement, validity, and
enforceability analysis and that, had such a proper analysis been performed, Counterclaim-

1 Defendants would never have initiated legal action against Sound Transit or third parties.

2 26. As a result, Sound Transit seeks a declaratory judgment that the '781 patent is
3 unenforceable.

4 **COUNT IV**
5 **VIOLATION OF THE WASHINGTON UNFAIR BUSINESS PRACTICES**
6 **AND CONSUMER PROTECTION ACT, RCW 19.86.020**

7 27. Sound Transit repeats and realleges the allegations above as if fully set forth
8 herein.

9 28. Pursuant to their '781 patent monetization and licensing campaign, Counterclaim-
10 Defendants have filed over 25 separate lawsuits and threatened and licensed over 66 separate
11 entities representing, *inter alia*, the airlines, railroad, travel, trucking, freight, logistics,
12 communications, software, and public transportation industries.

13 29. Counterclaim-Defendants '781 patent monetization and licensing campaign is
14 based on an overbroad interpretation of the patent claims and constitutes an unfair business
15 practice that is likely to deprive consumers of access to public services in the airlines, railroad,
16 travel, trucking, freight, logistics, communications, software, and public transportation industries
17 and/or to increase the price thereof. Counterclaim-Defendants actions have been willful, have
18 negatively impacted Sound Transit and the public interest in Washington, and will continue to do
19 so in violation of RCW 19.86.010, *et seq.*

20 30. Sound Transit and the public interest in Washington have been, and will continue
21 to be, irreparably harmed by Counterclaim-Defendants' violations in a manner and amount that
22 cannot fully be measured or compensated in economic terms. Such irreparable harm will
23 continue unless Counterclaim-Defendants' acts are restrained and/or enjoined during the
24 pendency of this action and thereafter.

25 31. Sound Transit is entitled to recover actual damages, treble damages, attorneys'
26 fees, and costs from Counterclaim-Defendants pursuant to RCW 19.86.090.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Counterclaimant prays for judgment as follows:

1. dismissal of Plaintiffs' *Complaint* with prejudice such that they take nothing by virtue thereof;

2. entry of declaratory judgment that the claims of the '781 patent are not infringed;

3. entry of declaratory judgment that the claims of the '781 patent are invalid;

4. entry of declaratory judgment that the '781 patent is unenforceable;

5. entry of a temporary restraining order, preliminary injunction, and permanent injunction enjoining Plaintiffs (and their directors, officers, agents, servants, employees, attorneys, and those in active concert or participation with them) from making statements, implications, threats, or claims against Sound Transit (or its directors, officers, agents, servants, employees, attorneys, customers, business partners, and those in active concert or participation with them) based on alleged infringement of the '781 patent;

6. entry of an order declaring this case to be an exceptional case;

7. ordering Plaintiffs to pay to Defendant the costs of defending this action, including but not limited to attorneys' fees and costs as allowed by governing statute, rule, and other legal authority;

8. awarding Sound Transit its actual damages, treble damages, attorneys' fees, and costs to be paid by Plaintiffs pursuant to RCW 19.86.090 and applicable law; and

9. awarding Sound Transit such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Sound Transit demands a trial by jury as to all issues so triable.

DATED this 16th day of July, 2012.

Respectfully submitted,

STOEL RIVES LLP

/s/ Brian C. Park

Brian C. Park, WSBA No. 25584
600 University Street, Suite 3600
Seattle, WA 98101
Tel.: (206) 386-7542
Fax: (206) 386-7500
BCPark@stoel.com

Nathan C. Brunette (*pro hac vice* pending)
900 S.W. Fifth Avenue, Suite 2600
Portland, OR 97204
Tel.: (503) 224-3380
Fax: (503) 220-2480
NCBrunette@stoel.com

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the parties in the above case.

DATED: July 16, 2012 at Seattle, Washington.

STOEL RIVES LLP



Melissa Wood
Practice Assistant

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