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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE TIE BAR OPERATING CO., LLC
D/B/A THE TIE BAR,

Plaintiff,

v.

LANDMARK TECHNOLOGY, LLC

Defendant.

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff The Tie Bar Operating Co., LLC d/b/a The Tie Bar (“Tie Bar”), for its Complaint against Defendant Landmark Technology, LLC (“Landmark”), hereby alleges, on knowledge as to its own actions and on information and belief as to all other matters, as follows:

INTRODUCTION

1. Landmark is a non-practicing entity seeking royalties from Tie Bar (and numerous others) for alleged patent infringement of United States Patent No. 6,289,319 (“’319 patent”). Tie Bar brings this action seeking a declaration that it has not infringed and does not infringe any valid and enforceable claim of the ’319 patent and a declaration that the ’319 patent is invalid.

THE PARTIES

2. Tie Bar is a limited liability company organized under the laws of the State of Illinois, with its principal place of business at 224 N. Desplaines, Suite 200, Chicago, IL, 60661.

3. Tie Bar sells premium quality menswear, including suits, dress shirts, and ties. Its roots date back to 2004 when it began in a Naperville, Illinois garage. It began operating pop-up shops in New York City in 2015, and since April of 2017, Tie Bar has operated a flagship store at 400 Madison Avenue in New York City. Tie Bar is known for its design quality—it designs its collections in-house and has been featured in major publications, including The New York Times, GQ, Men’s Health, Esquire, Forbes, and Bloomberg, among others. It is also known for delivering luxury quality at affordable prices and for its exceptional customer service.

4. Tie Bar does not have operations in California, Ohio, Texas, or Washington. Tie Bar has no offices or store locations in those states, and it has no employees in those states.

5. On information and belief, Landmark is a limited liability company organized under the laws of the State of Delaware, with an office at 329 Laurel, San Diego, California 92101.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, 2202, the Declaratory Judgment Act, and under the patent laws of the United States, 35 U.S.C. § 1 et seq.

7. This Court has personal jurisdiction over Landmark because of Landmark’s contacts with the state of New York. Landmark has purposefully directed its enforcement activities at residents of this district, including litigations against companies based in or having corporate offices in New York, *e.g.*, New York & Company, Inc., Aeropostale, Inc., Shutterstock, Inc., The Jones Group, Inc., Weightwatchers.com, Inc., Kenneth Cole Productions, Inc., and

Yoox Corp.¹ Landmark has also been involved in litigations in New York, *e.g.*, *Stampede Presentation Products, Inc. v. Landmark Technology, LLC*, W.D.N.Y. Case No. 1:17-cv-01121; *Adore Me, Inc. v. Landmark Technology, LLC*, S.D.N.Y. Case No. 15-cv-09800; *Yoox Corp. v. Landmark Technology, LLC*, S.D.N.Y. Case No. 15-cv-03893. On information and belief, Landmark derives substantial revenues from its patent licensing activities from companies based in or having corporate offices in New York.

8. This Court has personal jurisdiction over Landmark because Landmark has sufficient minimum contacts in the State of New York to satisfy New York's long-arm statute and Constitutional due process requirements as Landmark conducts regular business activities in the State of New York and in this Judicial District, including but not limited to in connection with its licensing activities.

9. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b) because a substantial part of the events giving rise to the claims alleged below occurred in this Judicial District and Tie Bar operates a flagship store in this District.

BACKGROUND

10. 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. A copy of the '319 patent is attached as Exhibit A. A first Reexamination Certificate for the '319 patent issued on or about July 17, 2007 adding new

¹ See, *e.g.*, *Landmark Technology, LLC v. New York and Co., Inc.*, E.D.T.X. Case No. 6:12-cv-00073; *Landmark Technology, LLC v. Aeropostale, Inc.*, E.D.T.X. Case No. 6:09-cv-00262; *Landmark Technology, LLC v. Shutterstock, Inc.*, E.D.T.X. Case No. 6:14-cv-00900; *Landmark Technology, LLC v. The Jones Group, Inc.*, E.D.T.X. Case No. 6:13-cv-00767; *Landmark Technology, LLC v. Weightwatchers.com, Inc.*, E.D.T.X. Case No. 6:14-cv-00902; *Landmark Technology v. Kenneth Cole Productions, Inc.*, E.D.T.X. Case No. 6:12-cv-0050; and *Yoox Corp. v. Landmark Technology, LLC*, S.D.N.Y. Case No. 15-cv-03893.

claims. A second Reexamination Certificate for the '319 patent issued on or about January 9, 2013.

11. On information and belief, Landmark claims to be the owner of the '319 patent and claims to have the right to enforce the '319 patent.

12. On information and belief, Landmark is a non-practicing entity that has filed over 100 litigations against various companies in different district courts asserting the '319 patent and/or patents related to the '319 patent.

13. By a letter dated February 9, 2018, Landmark accused Tie Bar of infringing the '319 patent ("First Letter," attached hereto as Exhibit B). The First Letter alleged that "The Tie Bar.com ("The Tie Bar") data processing systems, particularly <https://www.thetiebar.com/login?ReturnUrl=%2fcheckout> through [sic] practices U.S. Patent No. 6,289,319 . . ."). *See* Ex. B at 1; *see also id.* at 2 ("[T]he specific functionalities implemented by The Tie Bar using their servers and devices interfaced to The Tie Bar's web servers constitutes use of the technology taught within the meaning of Claim 1 of the '319 patent.")

14. The First Letter demanded that Tie Bar take a non-exclusive license to Landmark's patent portfolio, including the '319 patent, for \$65,000 and stated that the offer "will not be available in the event of litigation." *See* Ex. B at 2.

15. Until Tie Bar received the First Letter, it had no knowledge of Landmark or the '319 patent.

16. By a second letter dated March 9, 2018 ("Second Letter," attached hereto as Exhibit C), Landmark reiterated its license demand. The Second Letter concludes with a warning that the \$65,000 "offer expires April 9, 2018." *See* Ex. C.

17. Landmark has filed 40 lawsuits asserting the '319 patent since September 25, 2008, including 7 in the last 12 months. As evidenced by the Complaints it has filed against numerous other licensing targets, Landmark files patent infringement lawsuits against those companies who receive its licensing demand letters but refuse to pay Landmark the requested amounts. *See, e.g., Landmark Technology, LLC v. Gensco, Inc.*, W.D.W.A. Case No. 3:17-cv-005872, Dkt. No. 1, ¶ 13 (“On or about August 11, 2017, Landmark sent Gensco a letter informing Gensco of the '319 Patent and that Gensco’s actions, as more fully described below, constituted infringement of the '319 Patent.”) (attached as Exhibit D hereto); *Landmark Technology, LLC v. G Stage Love.com Inc.*, S.D.C.A. Case No. 3:16-cv-00760, Dkt. No. 1, ¶ 11 (“Plaintiff sent Defendant a letter informing Defendant of the '319 Patent that Defendant’s actions, as more fully described below, constituted infringement of the '319 Patent.”) (attached as Exhibit E hereto).

**FIRST CAUSE OF ACTION
(Declaratory Judgment of Non-Infringement)**

18. Tie Bar repeats and realleges the allegations in paragraphs 1-17 of its Complaint as though fully set forth herein.

19. Tie Bar has not infringed and does not infringe any valid and enforceable claim of the '319 patent, either literally or under the doctrine of equivalents.

20. There exists a real and immediate controversy between Landmark and Tie Bar concerning alleged infringement of the '319 patent to warrant the issuance of a declaratory judgment. This controversy arises, for example, from at least Landmark’s allegations in the First Letter and Second Letter that Tie Bar infringes at least claim 1 of the '319 patent and its demand that Tie Bar pay for a license to the Landmark portfolio on or before April 9, 2018. Landmark’s allegations against Tie Bar, alone and in combination with Landmark’s widespread campaign of

filing patent infringement lawsuits against licensing targets that refuse to pay the requested amounts, demonstrate an intent by Landmark to enforce the '319 patent against Tie Bar.

21. A judicial declaration is necessary and appropriate so that Tie Bar may ascertain its rights regarding the '319 patent.

**SECOND CAUSE OF ACTION
(Declaratory Judgment of Invalidity)**

22. Tie Bar repeats and realleges the allegations in paragraphs 1-21 of its Complaint as though fully set forth herein.

23. The '319 patent is invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 101 and 112.

24. For example, the '319 patent is invalid under 35 U.S.C. § 101 because its claims are directed to the abstract idea of automated data processing of business transactions, and the recited generic computer components do not transform the claims into patent-eligible subject matter.

25. As another example, the '319 patent is invalid under 35 U.S.C. § 112 because its claims are indefinite. The specification does not describe any structure corresponding to the functions recited for one or more of the means-plus-function elements recited in the claims, and the recited generic computer components do not satisfy the definiteness requirement.

26. There exists a real and immediate controversy between Landmark and Tie Bar concerning alleged infringement of the '319 patent to warrant the issuance of a declaratory judgment. This controversy arises, for example, from at least Landmark's allegations in the First Letter and Second Letter that Tie Bar infringes at least claim 1 of the '319 patent and its demand that Tie Bar pay for a license to the Landmark portfolio on or before April 9, 2018. Landmark's allegations against Tie Bar, alone and in combination with Landmark's widespread campaign of

filing patent infringement lawsuits against licensing targets that refuse to pay the requested amounts, demonstrate an intent by Landmark to enforce the '319 patent against Tie Bar.

27. A judicial declaration is necessary and appropriate so that Tie Bar may ascertain its rights regarding the '319 patent.

PRAYER FOR RELIEF

WHEREFORE, Tie Bar respectfully requests that the Court enter judgment in its favor granting the following relief:

- A. A declaration that Tie Bar has not infringed and does not infringe any valid and enforceable claim of the '319 patent;
- B. A declaration that the '319 patent is invalid for failure to comply with the requirements of Title 35, United States Code, including at least §§ 101 and/or 112;
- C. An order declaring that this is an exceptional case and awarding Tie Bar its costs, expenses, disbursements, and reasonable attorney fees under 35 U.S.C. § 285; and
- D. Such other and additional relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a jury trial on all issues raised in this action that are so triable.

Dated: April 6, 2018

Respectfully submitted,

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