

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

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KONINKLIJKE PHILIPS N.V.

Plaintiff,

v.

Case No. 13-596

ALTAIR ENGINEERING, INC., and  
ILUMISYS, INC., d/b/a TOGGLED

Defendants.

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**COMPLAINT**

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Plaintiff Koninklijke Philips N.V. (“Philips” or “Plaintiff”), for its Complaint against Defendants Altair Engineering, Inc., and Ilumisys, Inc., d/b/a Toggled (“Defendants”), alleges the following:

**NATURE OF ACTION**

1. This is a complaint against Defendants for making false and/or misleading representations in the marketplace in violation of Section 43(a) of the Lanham Act, as well as an action for declaratory judgment that the claims of Defendants’ United States Patent No. 7,049,761 (“the ‘761 Patent”) are invalid, Philips does not infringe any valid claim of the ‘761 Patent, and the ‘761 Patent is unenforceable as a result of Defendants’ misuse.
2. A true and correct copy of the ‘761 Patent is attached hereto as Exhibit 1.

**THE PARTIES**

3. Plaintiff Koninklijke Philips N.V. is a company organized under the laws of the Netherlands and having its principal place of business at: Amstelplein 2, Breitner Center, 1096 BC Amsterdam, The Netherlands.
4. On information and belief, Defendant Altair Engineering, Inc., is a Michigan

corporation qualified to do business in Wisconsin and having a principle place of business at 1820 East Big Beaver Road, Troy, Michigan 48083-2031.

5. On information and belief, Defendant Ilumisys, Inc., is a wholly-owned subsidiary of Altair Engineering, Inc., and is a Michigan corporation having a principle place of business at 1820 East Big Beaver Road, Troy, Michigan 48083-2031.

6. On information and belief, Defendant Ilumisys is doing business under the name, “Toggled.”

7. On information and belief, Defendant Ilumisys, Inc., is the assignee of the ‘761 Patent.

8. On information and belief, James Scapa (“Mr. Scapa”) is Chairman and CEO of Altair Engineering, Inc., and a member of the Board of Directors of Ilumisys, Inc.

#### **JURISDICTION AND VENUE**

9. This action arises under the laws of the United States, Titles 15 and 35 of the United States Code, 15 U.S.C. § 1, et seq. and 35 U.S.C. § 1, et seq., and under the Federal Declaratory Judgment Act. 28 U.S.C. §§ 2201 and 2202.

10. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

11. On information and belief, this Court has personal jurisdiction over Defendant Altair Engineering, Inc., because it does business in Wisconsin, and because it maintains a regional office in Wisconsin located at 5150 N. Port Washington Rd., Suite 101, Milwaukee, WI 53217.

12. On information and belief, this Court has personal jurisdiction over Defendant Ilumisys, Inc., d/b/a Toggled, because as a wholly-owned subsidiary of Altair Engineering, Inc., Ilumisys, Inc.’s activities are wholly controlled by, and thus attributable to, Altair Engineering, Inc.

13. Ilumisys, Inc.’s website, [www.toggled.com](http://www.toggled.com), states that Toggled is “An Altair

Company.” A copyright notice at the bottom of the website attributes copyright ownership to Altair Engineering, Inc.

14. Exhibit 2 attached hereto is a January 25, 2013 email from Mr. Scapa to Philips, which represents one example of many email communications from Mr. Scapa to Philips regarding the subject matter claimed by the ‘761 Patent. This correspondence from Mr. Scapa, carrying the Altair Engineering logo, indicates that Mr. Scapa was acting in his capacity as Chairman and CEO of Altair Engineering, Inc.

15. On information and belief, Defendants’ regional office in Milwaukee transacts business throughout the state of Wisconsin, and therefore, venue properly resides in the United States District Court for the Western District of Wisconsin pursuant to 28 U.S.C. §§ 1391(b) and (c), and/or 28 U.S.C. § 1400(b).

#### **THE PRESENCE OF AN ACTUAL CONTROVERSY**

16. Defendants began their attempts to force Philips to become a licensee of the ‘761 Patent in February 2010.

17. Philips requested that Defendants provide the bases for their belief that Philips was required to become a licensee. In spite of their ultimate burden of proving infringement, Defendants refused to specifically identify any claims of the ‘761 Patent purportedly infringed or which of several Philips LED-based replacement tube products for fluorescent lighting fixtures are asserted to infringe the ‘761 Patent.

18. After two years of unsuccessful negotiations, and as a result of Philips’ continued refusal to take a license in patents for which no justification for said license had ever been provided, on February 22, 2012, Defendants sent to Philips an email (Exhibit 3) stating its “need to get Philips signed up as a licensee,” and asking whether Philips is “willing to take a license to [Defendants’] patents.” The email of Exhibit 3 included a copy of Defendants’ proposed license agreement.

19. After further unsuccessful negotiations, Philips maintained its position that it would not take a license for which no justification had ever been provided by Defendants.

20. In an email to Philips dated January 25, 2013 (Exhibit 2), Mr. Scapa stated: “we are now at the point where a last-ditch effort by our organizations to reach an amicable agreement is required in order to avoid a rather unpleasant series of next steps.”

21. Philips asserts that it has a right to engage in making, using, offering to sell, and selling its LED-based replacement tube products for fluorescent lighting fixtures without a license under the ‘761 Patent from Defendants.

22. Defendants have already filed multiple complaints for patent infringement against several competitors in the Eastern District of Michigan, asserting, *inter alia*, that those competitors’ LED-based replacement tube products infringe the ‘761 Patent, as follows:

- *Altair Engineering, Inc. v. LEDdynamics, Incorporated*, 2:07-cv-13150;
- *Altair Engineering, Inc. v. High Tech Global Group Co., Ltd.*, 2:07-cv-13276;
- *Altair Engineering, Inc. v. Environmental Lights*, 2:07-cv-13379;
- *Altair Engineering, Inc. v. Seesmart LED, Inc.*, 2:10-cv-10247; and
- *Altair Engineering, Inc. v. LEDs America, Inc.*, 5:10-cv-13424.

23. At a minimum, Defendants’ behavior towards Philips, its communications threatening “a rather unpleasant series of next steps” unless a license agreement is entered into, and its history of filing suit against competitors alleging infringement of the ‘761 Patent, gives rise to an actual controversy between Philips and Defendants.

## COUNT I

### FALSE AND/OR MISLEADING REPRESENTATION UNDER § 43(A) OF THE LANHAM ACT

24. Philips hereby incorporates by reference its allegations contained in paragraphs 1 through 23 of this Complaint as though fully set forth herein.

25. On information and belief, Defendants have made and continue to make false and/or misleading representations in the marketplace that the ‘761 Patent is a “foundational” patent, that “[o]nly licensed companies are allowed to manufacture, sell, or use LED-based replacement light tubes,” and that LED-based replacement tubes for fluorescent lighting fixtures

cannot be made, sold, or used without infringing the '761 Patent. Defendants know, or should know, that the lawful scope of the '761 Patent is not broad enough to cover all such products; consequently, Defendants' continuing assertions as set forth herein are made in bad faith.

26. Exhibit 4 attached hereto is a copy of the Baldwin County Commission Agenda Action Form, Agenda Item Number EB1, bearing Work Session Meeting Date of January 25, 2011 and Commission Meeting Date February 1, 2011. As set forth on pages 2-3 of Exhibit 4, on or about November 16, 2010, the County of Baldwin, Alabama sought bids, bearing competitive bid designation "WG10-32A", for a contract related to LED-based light tubes that are designed to be used with existing fluorescent light fixtures.

27. As set forth in Exhibit 4, on or about December 9, 2010, Baldwin County received the bids for WG10-32A.

28. Exhibit 5 attached hereto is a December 10, 2010 letter that Defendant Altair's patent attorney sent to the Baldwin County Purchasing Director. In the December 10, 2010 letter, Defendants' lawyer wrote "to inform [Baldwin County] of Altair's foundational patent rights for LED-based light tubes that are designed to be used with existing fluorescent light fixtures." According to this letter, these "foundational" patent rights stemmed from the '761 Patent and United States Patent No. 7,510,299 ("the '299 Patent"). In this letter, Defendants' attorney stated: "[o]nly licensed companies are allowed to manufacture, sell, or use LED-based replacement light tubes," and warned the County that "before you award a contract dealing with LED-based light tubes or before [sic, you] have LED-based light tubes installed, you should ensure that the contractor installs licensed LED light tubes."

29. On information and belief, Defendants know, or should know, that such assertion exceeds the lawful scope of the '761 and/or '299 Patent, and consequently, the assertion that these patents cover every conceivable LED-based light tube, submitted by Defendants in response to the Baldwin County request for bids, is made in bad faith.

30. On information and belief, the false and/or misleading representations were made by Defendants to Baldwin County officials and others to improperly divert to licensees of the

'761 Patent all of Baldwin County's potential business relating to replacement tubes for fluorescent lighting fixtures.

31. On information and belief, Defendants' false and/or misleading representations were material and actually deceived Baldwin County.

32. Exhibit 6 attached hereto is a copy of the minutes of a December 21, 2010 meeting of the commissioners of Baldwin County. As stated in the minutes, the commissioners discussed Defendants' December 10, 2010 letter (Exhibit 5). The minutes of this meeting reflect on page 41 the following discussion:

"It appears that in order to proceed with a project that will utilize LED light tubes, Baldwin County would have to reject all bids related to WG10-32A and conduct yet another bid that reflects the patent and licensing requirements asserted by Altair Engineering . . . ."

33. The minutes further indicate that "due to the possibility of litigation should an unlicensed LED product be furnished to Baldwin County," Commissioner Robert E. James made a motion to the Commission "that the Baldwin County Commission reject all bids received in response to WG10-32A and directs staff to . . . advise the Baldwin County Commission at a future work session of any actions required to modify the Energy Efficiency and Conservation Block Grant, including elimination of the LED lighting portion of the grant."

34. According to the meeting minutes, Mr. James' motion was seconded by Commissioner J. Tucker Dorsey. Commissioners James, Dorsey, Frank Burt Jr., and Charles F. Gruber voted in favor of the motion. There were no votes against the motion, no abstentions, and no absences. Therefore, the motion was passed.

35. Defendants' foregoing false and/or misleading representations were made in interstate commerce by Michigan-based Defendants to Baldwin County in Alabama.

36. Defendants have continued their pattern of making such false and/or misleading representations by making similar false and/or misleading representations to Philips. For example, Defendants have attempted to obtain from Philips royalties for, *inter alia*, the '761

Patent on all of Philips' LED-based fluorescent lighting fixtures, without having provided Philips any basis or claim chart as to whether any specific Philips product actually infringes the '761 Patent. Defendants have continued to refuse to identify any specific Philips products that Defendants assert infringe the '761 Patent.

37. Defendants' false and/or misleading representations to Philips were made in interstate commerce by Michigan-based Defendants to Philips, which is based in the Netherlands, and relate to products Philips markets nationwide and internationally.

38. On information and belief, Defendants have continued their pattern of making such false and/or misleading representations by making similar false and/or misleading representations to others.

39. Exhibit 7 attached hereto is a copy of a May 6, 2013 Request for Information No. 13-4152CG, LED LAMPS, published by the Las Vegas Convention and Visitors Authority ("LVCVA"). Section I of the Request for Information states that the LVCVA "is looking to phase its lighting fixtures in meeting rooms, corridors and offices from fluorescent lamps to LED lamps at the Las Vegas Convention Center. . . and Cashman Center." The stated purpose of the Request for Information is to "provide information to the Authority to determine and source LED lamps that will meet or exceed the Authority's minimum requirements called for in the specifications. Selected LED lamp(s) will be formally and publically bid after selection."

40. Among other "minimum criteria," the Request for Information includes the following on page 11:

Lamps must be fully licensed by Altair Engineering (illumysis) [sic] to sell LED tubes in the United States. Patent numbers: 7,049,761 and 7,510,999 [sic]. Proof of licensing must be furnished upon request.

41. The "Proposal Form" attached as Tab B to the Request for Information (pages 13-17 of Exhibit 7) provided the form for bidders to complete. Consistent with the minimum criteria set forth at page 11 of the Request for Information, the Proposal Form listed as a "Minimum Criteria" the following (page 15 of Exhibit 7): "Lamps must be fully licensed by

Altair Engineering (illumysis[sic]) to sell LED tubes in the United States. Patent numbers: 7,049,761 and 7,510,999 [sic].”

42. On information and belief, Defendants made false and/or misleading representations to the LVCVA that were similar to the statements Defendants made to Philips and to Baldwin County.

43. On information and belief, Defendants knew, or should have known, that such assertions exceed the lawful scope of the ‘761 Patent and/or ‘299 Patent, and consequently, the assertion that these patents cover all conceivable LED-based fluorescent lighting fixtures is made in bad faith.

44. On information and belief, the false and/or misleading representations were made by Defendants to LVCVA, a potential customer of Philips, to improperly divert to licensees of the ‘761 Patent all of LVCVA’s potential business relating to replacement tubes for fluorescent lighting fixtures.

45. On information and belief, Defendants’ false statements/misrepresentations were material and actually deceived to the LVCVA, as evidenced by the LVCVA’s inclusion as a “minimum requirement” in its RFI that bidders must have a license to the ‘761 Patent.

46. On information and belief, Defendants’ false and/or misleading representations were made in interstate commerce by Michigan-based Defendants to the Nevada-based LVCVA.

47. If Defendants’ false statements/misrepresentations are permitted to continue, it is likely they will continue to deceive a substantial segment of the intended audience, including current and potential customers of Philips.

48. On information and belief, Defendants’ deception has been and will continue to be material, and if permitted to continue, will influence other potential Philips customers in a similar manner as the County of Baldwin and the LVCVA.

49. On information and belief, unless Defendants are enjoined, it is likely that Defendants will continue to make false and/or misleading representations like the ones described above, which will damage Philips, among other things, by preventing Philips from being able to



bid on future projects like those of Baldwin County and the LVCVA.

## **COUNT II**

### **DECLARATORY JUDGMENT OF PATENT MISUSE**

50. Philips hereby incorporates by reference its allegations contained in paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. Defendants' false statements/misrepresentations described above have impermissibly broadened the scope of the '761 Patent to cover all LED-based replacement tubes for fluorescent lighting fixtures, without Defendants providing any analysis to support their claim that LED-based replacement tubes actually infringe the '761 Patent.

52. Defendants' false statements/misrepresentations have had anticompetitive effects, including preventing Philips from being able to bid on the LVCVA's lighting project, and causing the County of Baldwin to reject all bids for its lighting project.

53. As set forth above, an actual controversy exists between Philips and Defendants as whether Defendants have misused the '761 Patent. The controversy is such that, pursuant to Federal Rules of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Philips is entitled to a declaration, in the form of a judgment, that the '761 Patent is unenforceable due to Defendants impermissible misuse of the '761 Patent. Such a determination and declaration is necessary and appropriate at this time.

## **COUNT III**

### **DECLARATORY JUDGMENT OF INVALIDITY OF THE '761 PATENT**

54. Philips hereby incorporates by reference its allegations contained in paragraphs 1 through 53 of this Complaint as though fully set forth herein.

55. Based on the conduct of Defendants and other threats to Philips regarding the "unpleasant" consequences of not taking a license, Philips is informed and believes that Defendants contend Philips infringes one or more claims of the '761 Patent, and that Defendants contend that the '761 Patent is valid and enforceable.

56. Philips denies that it infringes any valid and enforceable claim of the '761 Patent, and seeks a declaration from this Court to that effect.

57. One or more claims of the '761 Patent are invalid for failing to comply with the statutory conditions of patentability and the statutory requirements for disclosure and claiming that must be satisfied for patent validity under at least one of 35 U.S.C. §§ 101, 102, 103, and 112, and Philips seeks a declaration from this Court to that effect.

58. As set forth above, an actual controversy exists between Philips and Defendants as to the validity of the '761 Patent. The controversy is such that, pursuant to Federal Rules of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Philips is entitled to a declaration, in the form of a judgment, that one or more claims of the '761 Patent are invalid. Such a determination and declaration is necessary and appropriate at this time.

#### **COUNT IV**

##### **DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '761 PATENT**

59. Philips hereby incorporates by reference its allegations contained in paragraphs 1 through 58 of this Complaint as though fully set forth herein.

60. Based on the above-stated conduct of Defendants, Philips is informed and believes that Defendants contend Philips infringes one or more claims of the '761 Patent, and that Defendants contend that the '761 Patent is valid and enforceable.

61. Defendants have refused to identify which, if any, of Philips' products they believe infringe the '761 Patent.

62. On information and belief, at least some Philips LED-based replacement tubes for fluorescent lighting fixtures, including the CorePro LED T8 (Product Number 42976-1) and the Specifier LED T8 (Product Number 42186-7), do not infringe, and have not infringed, any valid claims of the '761 Patent.

63. An actual controversy thus exists between Philips and Defendants as to whether Philips has infringed, or is infringing, the '761 Patent; has contributed to infringement, or is

contributing to infringement of the '761 Patent; and has induced infringement, or is inducing infringement of the '761 Patent.

64. The controversy is such that, pursuant to Federal Rule of Civil Procedure 57 and 28 U.S.C. § 2201 et seq., Philips is entitled to a declaration, in the form of a judgment, that by its activities Philips has not infringed and is not infringing any valid and enforceable claim of the '761 Patent; has not contributed to infringement and is not contributing to infringement of the '761 Patent; and/or has not induced infringement and is not inducing infringement of the '761 Patent. Such a determination and declaration is necessary and appropriate at this time.

### **PRAYER FOR RELIEF**

WHEREFORE, Philips prays that:

- A. The Court enjoin the Defendants from making false statements/misrepresentations about the '761 Patent to potential customers of Philips;
- B. Philips be awarded its damages in an amount to be proven at trial;
- C. The Court declare that the '761 Patent is invalid;
- D. The Court declare that LED-based replacement tubes for fluorescent lighting fixtures marketed by Philips do not infringe any valid claim of the '761 Patent;
- E. The Court declare that Defendants have engaged in patent misuse with respect to the '761 Patent, rendering the '761 Patent unenforceable;
- F. The Court declare that Philips' case against Defendants is an exceptional case within the meaning of 35 U.S.C. § 285 and/or 15 U.S.C. § 1117;
- G. Philips be awarded its costs and attorneys' fees; and
- H. Philips be awarded such other and further relief as this Court deems is just and proper.

### **DEMAND FOR A JURY TRIAL**

Philips hereby demands a trial by jury in this action.

Dated: August 26th, 2013

Respectfully submitted,

s/ Jeffrey A. McIntyre

Jeffrey A. McIntyre

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