

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

INFO-HOLD, INC.

Plaintiff,

v.

MUZAK HOLDINGS LLC AND MUZAK LLC,

Defendants.

Civil Action No. 1:11-cv-283

District Judge Timothy S. Black

Magistrate Judge Karen L. Litkovitz

**STIPULATION OF JUDGMENT OF NON-INFRINGEMENT OF '374 PATENT
CLAIMS 7-11, 14-18, 20-22, 26-29, 37 AND 38**

WHEREAS Plaintiff Info-Hold, LLC ("Info-Hold") has alleged in this action that Muzak Holdings LLC and Muzak LLC both infringe claims 3, 6-11, 13-22, 24, 26-29, 37 and 38 of U.S. Patent No. 5, 991,374 ("the '374 Patent");

WHEREAS in its October 10, 2012, Order on Claim Construction (Dkt. No. 60), the Court construed the term "when a caller is placed on hold" to mean "at the moment a caller is placed on hold," and subsequently denied Info-Hold's request for reconsideration of this construction on November 6, 2012 (Dkt. No. 74);

WHEREAS the term "when a caller is placed on hold" appears in independent claims 7, 17, 22, 26 and 37 of the '374 Patent;

WHEREAS, in response to requests for admissions (Exh. A hereto), Info-Hold admitted that neither Muzak LLC and nor Muzak Holdings LLC infringes independent claims 7, 17, 22, 26 and 37 of the '374 Patent, either directly or indirectly, under the Court's construction of "when a caller is placed on hold" as set forth in Dkt. No. 60;

WHEREAS the term "when a caller is placed on hold" is incorporated into claims 8-12 and 14-16, which depend from independent claim 7, claims 18, 20 and 21, which depend from independent claim 17, unasserted claim 23, which depends from independent claim 22, claims 27

and 28 which depend from independent claim 26, and claim 38, which depends from independent claim 37;

WHEREAS Muzak LLC and Muzak Holdings LLC cannot infringe a dependent claim if they do not infringe the independent claim upon which that dependent claim depends; and

WHEREAS Info-Hold agrees to the entry of judgment of non-infringement of claims 7-11, 14-18, 20-22, 26-29, 37 and 38 of the '374 Patent, based upon the Court's construction of "when a caller is placed on hold," but reserves its right to appeal the Court's construction of "when a caller is placed upon hold."

IT IS HEREBY **STIPULATED AND AGREED** between plaintiff INFO-HOLD, INC., and Defendants MUZAK LLC and MUZAK HOLDINGS LLC, that the Court enter judgment as follows:

1. Based upon the Court's Order on Claim Construction dated October 10, 2012 (Dkt. No. 60), and Exhibit A hereto, the Court declares that Muzak Holdings LLC and Muzak LLC do not infringe claims 7-11, 14-18, 20-22, 26-29, 37 and 38 of the '374 Patent, either directly or indirectly.

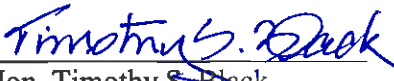
2. Based upon the Court's Order on Claim Construction dated October 10, 2012 (Dkt. No. 60), Info-Hold's Complaint herein, to the extent it claims infringement by Muzak Holdings LLC and Muzak LLC of claims 7-11, 14-18, 20-22, 26-29, 37 and 38 of the '374 Patent, is dismissed **with** prejudice.

3. Based upon the Court's Order on Claim Construction dated October 10, 2012 (Dkt. No. 60), Muzak Holdings LLC and Muzak LLC's counterclaims herein, to the extent they request a declaratory judgment that claims 7-11, 14-18, 20-22, 26-29, 37 and 38 of the '374 Patent are invalid or unenforceable, are dismissed **without** prejudice.

4. Nothing in this Stipulation shall affect Info-Hold's right to appeal the Court's construction of "when a caller is placed on hold."

IT IS SO ORDERED:

November 27, 2012



Hon. Timothy S. Black
United States District Judge

Dated: November 26, 2012

INFO-HOLD, INC.

By: /s/ Daniel J. Wood by Barry Bretschneider per email authorization

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Dated: November 26, 2012

MUZAK HOLDINGS LLC AND MUZAK LLC

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CERTIFICATE OF SERVICE

I certify that on November 26, 2012, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to counsel of record, and I also served the foregoing via electronic mail to the following:

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