

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

SAIED TADAYON	)	
	)	
and	)	
	)	
BIJAN TADAYON	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.: 3:11cv213 (REP)
	)	
EXECUBUS, INC.,	)	
d/b/a Vamoose Bus	)	
	)	
Defendant.	)	

**DEFENDANT’S ANSWER TO THE  
COMPLAINT AND COUNTERCLAIM**

Defendant Execubus, Inc., d/b/a Vamoose Bus, (“Defendant” or “Execubus”) by counsel for its Answer to the Complaint and Counterclaim states:

1. Execubus lacks sufficient information to admit or deny the allegations contained in Paragraph 1 and therefore they are denied.
2. The allegations in Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are denied as follows: Execubus denies allegations of patent infringement and denies the allegations concerning subject matter jurisdiction as legal conclusion.
4. The allegations in Paragraph 4 are denied.
5. The allegations in Paragraph 5 are denied as legal conclusions.
6. The allegations in Paragraph 6 are denied as Exhibit A speaks for itself.

7. The allegations in Paragraph 7 are denied for lack of sufficient information.
8. The allegations in Paragraph 8 are admitted.
9. The allegations in Paragraph 9 are admitted.
10. The allegations in Paragraph 10 are admitted.
11. The allegations in Paragraph 11 are admitted.
12. The allegations in Paragraph 12 are admitted.
13. The allegations in Paragraph 13 are admitted.
14. The allegations in Paragraph 14 are admitted.
15. The allegations in Paragraph 15 are admitted.
16. The allegations in Paragraph 16 are admitted.
17. The allegations in Paragraph 17 are admitted.
18. The allegations in Paragraph 18 are admitted.
19. The allegations in Paragraph 19 are admitted.
20. The allegations in Paragraph 20 are admitted.
21. The allegations in Paragraph 21 are denied as legal conclusions.
22. The allegations in Paragraph 22 are denied as legal conclusions.
23. The allegations in Paragraph 23 are denied.
24. The allegations in Paragraph 24 are denied as phrased.
25. The allegations in Paragraph 25 are denied as phrased.
26. The allegations in Paragraph 26 are denied as phrased.
27. The allegations in Paragraph 27 are denied as phrased.
28. The allegations in Paragraph 28 are denied as the referenced website speaks for

itself.

29. The allegations in Paragraph 29 are denied as the referenced website speaks for itself.

30. The allegations in Paragraph 30 are denied for lack of sufficient information.

31. The allegations in Paragraph 31 are denied for lack of sufficient information.

32. The allegations in Paragraph 32 are denied.

33. The allegations in Paragraph 33 are denied.

34. The allegations in Paragraph 34 are denied.

35. The allegations in Paragraph 35 are denied.

36. The allegations in Paragraph 36 are denied.

The Defendant denies that the Plaintiffs are entitled to any of the relief sought in their prayer for relief.

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

The Complaint fails to state a cause of action for which relief can be granted.

#### **Second Affirmative Defense**

Execubus did not directly, indirectly, contributorily, or willfully infringe any claim of the '657 Patent.

**Third Affirmative Defense**

The '657 Patent is invalid for failure to meet the requirements for patentability set forth in 35 U.S.C. § 101, *et seq.* including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

**Fourth Affirmative Defense**

Under 35 U.S.C. § 287, Execubus is not liable to Plaintiffs for any alleged damages that allegedly occurred before Plaintiff provided actual notice to Execubus.

**Fifth Affirmative Defense**

Plaintiff's claims are barred in whole or in part by the doctrines of waiver and/or estoppel.

**Sixth Affirmative Defense**

Plaintiff's claims are barred in whole or in part by laches.

**Seventh Affirmative Defense**

Plaintiff's claims are barred in whole or in part by acquiescence.

**Eighth Affirmative Defense**

Plaintiffs are estopped from construing the claims of the '657 Patent to cover the wireless system on any Execubus motorcoach because representations, omissions, and/or concessions made to the United States Patent and Trademark Office during the prosecution of the '657 Patent limit the scope of the claims of the '657 Patent.

**Ninth Affirmative Defense**

Plaintiffs are estopped from applying the doctrine of equivalents to the claims of the '657 Patent in light of arguments and amendments that were made to the United States Patent and Trademark Office during the prosecution of the '657 Patent.

**Tenth Affirmative Defense**

The wireless systems on any Execubus has substantial non-infringing uses so they do not contributorily infringe the '657 Patent.

**COUNTERCLAIMS**

For its counterclaims against Plaintiffs Saied Tadayon and Bijan Tadayon ("Plaintiffs"), Execubus, Inc. ("Defendant" and/or Execubus") states:

**The Parties**

1. Execubus, Inc., d/b/a Vamoose Bus is a New York corporation having a principal place of business at 19 Penn Plaza, Suite 514, New York, New York 10001.
2. Upon information and belief, Plaintiffs Saied Tadayon and Bijan Tadayon are individuals residing in the State of Maryland, with an address at 11204 Albermyrtle Road, Potomac, Maryland 20854.
3. This Court has subject matter jurisdiction over this action under and by virtue of the Declaratory Judgment Act, 28 U.S.C. § 2201, 28 U.S.C. § 2202, and 28 U.S.C. § 1338(a) in that this action involves patent non-infringement and invalidity subject matter over which this Court has exclusive jurisdiction. This Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1367(a) because the claims involved are substantially related questions of law and fact to the claims already pending before this Court in this action.

4. A justiciable controversy exists between Execubus and Plaintiffs because Plaintiffs have filed a Complaint in this jurisdiction alleging that Execubus infringes United States Patent No. 7,031,657 (the “‘657 Patent”).

5. This Court has personal jurisdiction over Plaintiffs because they have made themselves subject to jurisdiction by filing the Complaint in this case in this jurisdiction.

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 because Plaintiffs are subject to personal jurisdiction here.

**COUNT I  
DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF THE ‘657 PATENT**

7. Defendant realleges and incorporates herein by reference paragraphs 1-6 as paragraph 7.

8. Plaintiffs have alleged in their Complaint that they are the assignees of the ‘657 Patent.

9. Plaintiffs have alleged in their Complaint that Execubus has directly and/or contributorily infringed and/or induced infringement of and are continuing to directly and/or contributorily infringe and/or induce infringement of the ‘657 Patent, and Plaintiffs have alleged that the alleged infringement is willful.

10. Execubus has not directly and/or contributorily infringed, and/or induced infringement of the ‘657 Patent, and Execubus thus is not continuing to directly and/or contributorily infringe and/or induce infringement of the ‘657 Patent. Execubus thus also has not willfully infringed the ‘657 Patent.

11. Execubus therefore is entitled to a declaratory judgment that it has not and does not infringe the '657 Patent.

12. Execubus simply leases the buses and the internet access equipment on board some of the buses are standard off-the-shelf modems and routers sold by Sprint using Netgear modems and a Sierra Wireless receiver.

**COUNT II  
COUNTERCLAIM FOR INVALIDITY OF THE '657 PATENT**

13. Execubus realleges and incorporates herein by reference paragraphs 1-12 as paragraph 13.

14. The '657 Patent fails to meet the requirements for patentability set forth in 35 U.S.C. § 101, *et seq.* including, but not limited to, 35 U.S.C. §§ 101, 102, 103 and 112.

15. Execubus is therefore entitled to a declaratory judgment that the '657 Patent is invalid.

**PRAYER FOR RELIEF**

WHEREFORE, Execubus respectfully requests this Court to enter an Order:

- (a) entering judgment in favor of Execubus and against Plaintiffs on all claims;
- (b) declaring that Execubus does not directly, indirectly, contributorily or willfully infringe the '657 Patent;
- (c) declaring that the '657 Patent is invalid;
- (d) declaring that Execubus has not violated any other rights of Plaintiffs;
- (e) dismissing Plaintiff's Complaint with prejudice;
- (f) granting Execubus its attorneys' fees, disbursements, and costs; and
- (g) granting such other relief as this Court deems just and appropriate.

**JURY DEMAND**

Execubus hereby demands a trial by jury on all issues triable to a jury in this case.

Dated: May 13, 2011

Respectfully Submitted,  
WALSH, COLUCCI, LUBELEY,  
EMRICH & WALSH, P.C.

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CERTIFICATE OF SERVICE

I, E. Andrew Burcher, hereby certify that on the 13<sup>th</sup> day of May, 2011, I filed the foregoing using the CM/ECF system which will send a notice of electronic filing through the Court's electronic filing systems to the Plaintiffs and by first-class mail as follows:

Saied Tadayon  
Bijan Tadayon  
11204 Albermyrtle Road  
Potomac, Maryland 20854.

/s/ E. Andrew Burcher  
E. Andrew Burcher