

# Appendix D

## TO PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION OF THE “REPLY IN SUPPORT OF UNITED STATES’ MOTION TO DISMISS”

### Appendix D-1

- A. Declaratory Judgment Act, 28 U.S.C. §§2201, 2202
- B. Injunctive Relief *versus* Ant-Injunction Act (“AIA”) (equitable and ancillary relief including preliminary and permanent injunctive relief)
- C. Pursuant to Fed. R. Civ. P, Rule 52, Judgment on Partial Findings
- D. Federal Rules of Civil Procedure, Rule 8(a)
- E. Rule 57 of the Federal Rules of Civil Procedure
- F. U.S. Const. Art. III, Sec. 2. Pursuant to 28 U.S. Code § 1651 – Writs,
- G. First Amendment Relief in the right to petition

### **28 U.S. Code § 2201 - Creation of remedy**

#### **(a)**

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

#### **(b)**

For limitations on actions brought with respect to drug patents see section 505 or 512 of the Federal Food, Drug, and Cosmetic Act, or section 351 of the Public Health Service Act.

(June 25, 1948, ch. 646, 62 Stat. 964; May 24, 1949, ch. 139, § 111, 63 Stat. 105; Aug. 28, 1954, ch. 1033, 68 Stat. 890; Pub. L. 85–508, § 12(p), July 7, 1958, 72 Stat. 349; Pub. L. 94–455, title XIII, § 1306(b)(8), Oct. 4, 1976, 90 Stat. 1719; Pub. L. 95–598, title II, § 249, Nov. 6, 1978, 92 Stat. 2672; Pub. L. 98–417, title I, § 106, Sept. 24, 1984, 98 Stat. 1597; Pub. L. 100–449, title IV, § 402(c), Sept. 28, 1988, 102 Stat. 1884; Pub. L. 100–670, title I, § 107(b), Nov. 16, 1988, 102 Stat. 3984; Pub. L. 103–182, title IV, § 414(b), Dec. 8, 1993, 107 Stat. 2147; Pub. L. 111–148, title VII, § 7002(c)(2), Mar. 23, 2010, 124 Stat. 816.)

### **28 U.S. Code § 2202 - Further relief**

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

(June 25, 1948, ch. 646, 62 Stat. 964.)

Plaintiff, as a consequence of the unconstitutionality of the challenged law, conduct and activity of the Defendants alleged supra; Plaintiff is entitled to equitable and ancillary relief including preliminary and permanent injunctive relief.

Preliminary injunctive relief is justified because:

- a). Plaintiff is likely to succeed on the merits; and
- b). Plaintiff will continue to suffer irreparable harm if the injunction is denied because enforcement of the challenged law, conduct and activity of the Defendants is a continuing violation of Plaintiffs' constitutional rights; and
- c). The continuing harm inflicted upon Plaintiff by the challenged law, conduct and activity of the Defendants outweighs any harm that would stem from enjoining their enforcement; and
- d). Enforcement of the constitutional rights specified herein is in the public interest or by upholding free exercise rights and enjoining the challenged law, conduct and activity herein.
- e). Permanent injunctive relief is justified because Plaintiff has no adequate remedy at law to protect him from the continuing threat of enforcement of the challenged law, conduct and activity as alleged supra and for the reason that criminal punishment is an irreparable harm.

## **Rule 52. Findings and Conclusions by the Court; Judgment on Partial Findings**

### **(a) FINDINGS AND CONCLUSIONS.**

(1) *In General.* In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58

(2) *For an Interlocutory Injunction.* In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(3) *For a Motion.* The court is not required to state findings or conclusions when ruling on a motion under Rule 12 or 56 or, unless these rules provide otherwise, on any other motion.

(4) *Effect of a Master's Findings.* A master's findings, to the extent adopted by the court, must be considered the court's findings.

(5) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(6) *Setting Aside the Findings.* Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

(b) **AMENDED OR ADDITIONAL FINDINGS.** On a party's motion filed no later than 28 days after the entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly. The motion may accompany a motion for a new trial under Rule 59.

(c) JUDGMENT ON PARTIAL FINDINGS. If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law as required by Rule 52(a).

#### NOTES

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 28, 1983, eff. Aug. 1, 1983; Apr. 29, 1985, eff. Aug. 1, 1985; Apr. 30, 1991, eff. Dec. 1, 1991; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

### Rule 8. General Rules of Pleading

(a) CLAIM FOR RELIEF. A pleading that states a claim for relief must contain:

- (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
- (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
- (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

(e) CONSTRUING PLEADINGS. Pleadings must be construed so as to do justice.

### Rule 57. Declaratory Judgment

These rules govern the procedure for obtaining a declaratory judgment under 28 U.S.C. §2201. Rules 38 and 39 govern a demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate. The court may order a speedy hearing of a declaratory-judgment action.

#### NOTES

(As amended Dec. 29, 1948, eff. Oct. 20, 1949; Apr. 30, 2007, eff. Dec. 1, 2007.)

### 28 U.S. Code § 1651 – Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

(June 25, 1948, ch. 646, 62 Stat. 944; May 24, 1949, ch. 139, § 90, 63 Stat. 102.)

### First Amendment

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the **right** of the people peaceably to assemble, and to **petition** the government for a redress of grievances.”