

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DISTRICT

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SOUTHERN DISTRICT
OF INDIANA
LAURA A. BRIDGES

SYNDICATE SALES, INC.,)
)
Plaintiff,)
)
v.)
)
GARCIA GROUP, INC.,)
)
Defendant.)

1:10-cv-0545 WTL-DML
Case No. _____

DEMAND FOR JURY TRIAL

**COMPLAINT FOR DECLARATORY JUDGMENT AND
JURY TRIAL DEMAND**

Plaintiff Syndicate Sales, Inc. ("Syndicate") hereby demands a jury trial and alleges as follows for its complaint against Garcia Group, Inc. ("Garcia"). All facts herein are alleged on information and belief except those facts concerning the activities of Syndicate.

1. This is a civil action arising under the Patent Laws of the United States, 35 U.S.C. § 101, *et seq.*, seeking a declaratory judgment that no valid and enforceable claims of United States Design Patent Nos. D614,530 (the "'530 patent") and D614,531 (the "'531 patent") are infringed by Syndicate, and that the '530 patent and '531 patent are invalid and unenforceable. Copies of the '530 patent and the '531 patent as issued by the U.S. Patent and Trademark Office ("USPTO") are attached as Exhibits A and B, respectively.

NOTICE OF OTHER PROCEEDING

2. Defendant Garcia filed a lawsuit against Syndicate in the Northern District of Georgia, Atlanta Division, in an action styled *Garcia Group Inc. v. Syndicate Sales, Inc., C.A. No. 1:09-CV-0820 JEC* (the "Georgia Action"), alleging copyright infringement and unfair competition by Syndicate. Neither the '530 patent nor the '531 patent were in effect, nor had the applications leading to the '530 patent and the '531 patent been filed with the USPTO, when

Garcia filed the Georgia Action against Syndicate on March 26, 2009. Neither the '530 patent nor the '531 patent are at issue in the Georgia Action.

JURISDICTION AND VENUE

3. This action arises under the patent laws of the United States, Title 35 of the United States Code, with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the courts of the United States, 28 U.S.C. §§ 2201 and 2002.

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332, 1338, 2201, and 2202, on the grounds that Syndicate seeks a declaration of its rights against threats of patent infringement litigation made by Garcia.

5. This Court has personal jurisdiction over Garcia because it does business by way of marketing and sales of product in Indiana and has sufficient contacts to subject it to personal jurisdiction in this judicial district.

6. Venue is appropriate in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this district. Specifically, Syndicate has its principal place of business in the Southern District of Indiana, the allegedly infringing products were manufactured for and distributed by Syndicate in the Southern District of Indiana, and the effect of the threat of litigation was felt by Syndicate in the Southern District of Indiana.

PARTIES

7. Plaintiff Syndicate is a Indiana corporation with its principal place of business at 2025 North Wabash Street, Kokomo, Indiana 46901.

8. On information and belief, Garcia is a corporation organized and existing under the laws of Georgia. Garcia's business address is 5154 Peachtree Industrial Boulevard, Atlanta,

Georgia 30341. The USPTO identifies Garcia as the assignee of the '530 patent and the '531 patent.

FACTS

9. The patent application that issued as the '530 patent was filed with the USPTO on June 10, 2009. The '530 patent issued on April 27, 2010, entitled "FACETED VASE," listing P. F. Garcia and David Garcia as co-inventors and listing Garcia as assignee. The '530 patent includes various drawings of urn-shaped eight-sided faceted vases. According to USPTO assignment records, P. F. Garcia and David Garcia executed an assignment on July 6, 2009, and June 26, 2009, respectively, assigning their rights to Garcia, which was recorded on July 9, 2009.

10. The patent application that issued as the '531 patent was also filed with the USPTO on June 10, 2009. The '531 patent also issued on April 27, 2010, entitled "FACETED VASE," listing P. F. Garcia and David Garcia as co-inventors and listing Garcia as assignee. The '531 patent includes various drawings of concave eight-sided faceted vases. According to USPTO assignment records, P. F. Garcia and David Garcia executed an assignment on July 6, 2009, and June 26, 2009, respectively, assigning their rights to Garcia, which was recorded on July 9, 2009.

11. On April 27, 2010, Garcia filed a "Notice of Possible Patent Infringement claim" (the "Notice") in the Georgia Action, informing that Court that the '530 patent and the '531 patent issued on that date, and that Garcia expects to bring a claim for infringement of at least one of the '530 patent and the '531 patent against Syndicate. A true and correct copy of the Notice is attached as Exhibit C. A representative of Garcia also contacted Hayden Pace, Georgia counsel for Syndicate, on that same day, indicating an intent to file an action for patent infringement against Syndicate.

12. No claim of patent infringement against Syndicate has been filed by Garcia.

13. Neither the '530 patent nor the '531 patent are infringed, are valid, or are enforceable.

14. Substantial prior art exists for octagonal faceted vases. For example, Garcia had knowledge of various vase designs, including at least those designs owned by the E. O. Brody Company, an entity subsequently acquired by Syndicate on February 16, 2008, and knowingly did not disclose those vase designs to the USPTO during the prosecution of the patent applications leading to the '530 patent and the '531 patent. Those vase designs, among others, are relevant prior art during prosecution of the applications leading to the '530 patent and the '531 patent.

15. Inventor P. F. Garcia had direct knowledge of multiple vase designs owned by the E. O. Brody Company prior to the filing of the patent applications leading to the '530 patent and the '531 patent by way of his professional affiliation with the E. O. Brody Company, including designs that would have been considered to be relevant prior art during prosecution of the applications leading to the '530 patent and the '531 patent. In particular, P. F. Garcia represented the Octavia™ line of vases for the E. O. Brody Company prior to June 2008, more than one year before the filing of the applications leading to the '530 patent and the '531 patent.

16. In view of the Notice and communication from Garcia's counsel, Syndicate is under a reasonable and serious apprehension that it will imminently be sued by Garcia for infringement of the '530 patent and/or the '531 patent. As a result, an actual controversy exists between Syndicate and Garcia concerning whether the '530 patent and the '531 patent are not infringed, are invalid, and are unenforceable.

FIRST CLAIM FOR RELIEF
**(Declaratory Judgment of Non-Infringement of
U.S. Patent Nos. D614,530 and D614,531)**

17. Syndicate restates and incorporates by reference the allegations in paragraphs 1-16.

18. There exists an actual and justiciable controversy between Syndicate and Garcia regarding the infringement of either or both of the '530 patent and the '531 patent under 28 U.S.C. §§ 2201 and 2202.

19. Syndicate has reasonable apprehension of being sued by Garcia due to Garcia's Notice in the Georgia Action, alleging patent infringement and threatening a patent infringement lawsuit.

20. In fact, Syndicate has not infringed and does not infringe, either directly or indirectly, any valid and enforceable claim of the '530 patent or the '531 patent.

21. Among other reasons why there is no infringement is that Syndicate's vase designs are different than Garcia's designs.

22. Furthermore, no ordinary observer, when familiar with the prior art vase designs, including those known by and not disclosed by Garcia during prosecution of the patent applications leading to the '530 patent and the '531 patent, would be deceived into believing that Syndicate's vases are the same as the vases in the '530 patent and the '531 patent.

23. Declaratory relief is necessary and appropriate in this case because the Court's judgment on the issue of patent non-infringement will afford Syndicate relief from the uncertainty and controversy surrounding Garcia's alleged infringement of the '530 patent and/or the '531 patent by Syndicate.

24. Accordingly, Syndicate requests a judicial determination of its rights, duties, and obligations with regard to the '530 patent and the '531 patent.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment of Invalidity of
U.S. Patent Nos. D614,530 and D614,531)

25. Syndicate restates and incorporates by reference the allegations in paragraphs 1-24.

26. There exists an actual and justiciable controversy between Syndicate and Garcia regarding the validity of the either or both of the '530 patent and the '531 patent. Among other reasons, Garcia's patented vase designs are not novel, and they were not invented by either named inventor on the '530 patent and the '531 patent. Accordingly, Syndicate requests a judicial determination of its rights, duties, and obligations with regard to the '530 patent and the '531 patent.

27. Declaratory relief is necessary and appropriate in this case because the Court's judgment on the issue of patent invalidity will afford Syndicate relief from the uncertainty and controversy surrounding Garcia's intent to enforce the '530 patent and/or the '531 patent against Syndicate.

28. The claims of the '530 patent and the '531 patent are invalid for failure to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, including 35 U.S.C. §§ 101, 102, 103, and 112.

29. A judicial declaration of invalidity is necessary and appropriate so that Syndicate may ascertain its rights regarding the '530 patent and the '531 patent.

THIRD CLAIM FOR RELIEF
**(Declaratory Judgment of Unenforceability
of U.S. Patent Nos. D614,530 and D614,531)**

30. Syndicate restates and incorporates by reference the allegations in paragraphs 1-29.

31. There exists an actual and justiciable controversy between Syndicate and Garcia regarding the enforceability of the '530 patent and the '531 patent. Accordingly, Syndicate requests a judicial determination of its rights, duties, and obligations with regard to the '530 patent and the '531 patent.

32. Declaratory relief is necessary and appropriate in this case because the Court's judgment on the issue of patent enforceability will afford Syndicate relief from the uncertainty and controversy surrounding Garcia's intent to enforce the '530 patent and/or the '531 patent against Syndicate.

33. The '530 patent and the '531 patent are unenforceable under the doctrine of inequitable conduct. On information and belief, the named inventors and/or others substantively involved in prosecution of the applications leading to the '530 patent and the '531 patent were aware of information material to the patentability of the claims of the '530 patent and the '531 patent, such as material prior art and the failure to invent the claimed subject matter, but intentionally withheld that information from the USPTO with the intent of deceiving the USPTO.

34. A judicial declaration of unenforceability is necessary and appropriate so that Syndicate may ascertain its rights regarding the '530 patent and the '531 patent.

FOURTH CLAIM FOR RELIEF
(Exceptional Case under 35 U.S.C. § 285)

35. Syndicate restates and incorporates by reference the allegations in paragraphs 1-34.

36. Syndicate requests a judgment that this is an exceptional case within the meaning of 35 U.S.C. § 285, entitling Syndicate to an award of reasonable attorney's fees, expenses, and costs.

PRAYER FOR RELIEF

WHEREFORE, Syndicate prays for a declaration from this Court and judgment against Garcia as follows:

1. a declaration that Syndicate has not infringed and does not infringe any valid and enforceable claim of the '530 patent and the '531 patent;
2. a declaration that the claims of the '530 patent and the '531 patent are invalid;
3. a declaration that the '530 patent and the '531 patent are unenforceable;
4. a declaration that Garcia, and each of its officers, employees, agents, alter egos, attorneys, and any persons in active concert or participation with them be restrained and enjoined from further threatening, prosecuting or instituting any action against Syndicate claiming that the '530 patent and/or the '531 patent is/are valid, enforceable, or infringed, or from representing that the products or services of Syndicate infringe the '530 patent and/or the '531 patent;
5. a judgment that Garcia take nothing, including no recovery under 35 U.S.C. § 154(d);
6. a judgment that this is an exceptional case within the meaning of 35 U.S.C. § 285, entitling Syndicate to an award of reasonable attorneys' fees, expenses, and costs in this action; and
7. an award to Syndicate of any other relief, in law and in equity, as the Court deems just, reasonable, and proper.

DEMAND FOR JURY TRIAL

Pursuant to Local Rule 38.1 and Fed. R. Civ. P. 38, Syndicate demands a trial by jury on all issues so triable in this action.

Dated: April 30, 2010

Respectfully submitted,



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