

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TOMMY STUTTS,	§	
	§	
<i>Plaintiff</i>	§	CASE NO. 2:11-CV-389-DF
v.	§	JURY DEMANDED
	§	
RAPID COOL MISTING SYSTEMS;	§	
TPI CORPORATION;	§	
AQUA QUALITY WATER SYSTEMS, INC.;	§	
LAVA HEAT ITALIA; AND	§	
J & D SALES, INC.	§	
OF EAU CLAIRE, WISCONSIN;	§	
	§	
<i>Defendants</i>	§	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff Tommy Stutts (“Stutts”) and files this Original Complaint against Defendants Rapid Cool Misting Systems (“Rapid Cool”), TPI Corporation (“TPI”), Aqua Quality Water Systems, Inc. a/k/a AQuality Water Systems, Inc. (“AQuality”), Lava Heat Italia (“Lava Heat”), and J & D Sales, Inc. of Eau Claire, Wisconsin a/k/a J & D Manufacturing, Inc. (“J & D”), and alleges as follows:

I. NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

II. THE PARTIES

2. Plaintiff **Tommy Stutts** is an individual resident of Henderson County, Texas.

3. Defendant **Rapid Cool Misting Systems** is a California company that can be served through an officer or director at Rapid Cool Misting Systems, 28305 Industry Drive, Valencia, California 91355.

4. Defendant **TPI Corporation** is a Tennessee Corporation that maintains its principal place of business at 114 Roscoe Fitz Road, Gray, Tennessee 37615. This defendant can be served with process through its Registered Agent, R.E. Henry, Jr., 114 Roscoe Fitz Road, Gray, Tennessee 37615.

5. Defendant **Aqua Quality Water Systems, Inc. a/k/a AQuality Water Systems, Inc.** is a Texas Corporation that maintains its principal place of business at 12125 Jones Maltsberger Road, Suite 7, San Antonio, Texas 78247. This defendant can be served with process through its Registered Agent, Christopher M. Davie, 12125 Jones Maltsberger Road, Suite 7, San Antonio, Texas 78247.

6. Defendant **Lava Heat** is a California company that can be served through an officer or director at Lava Heat Italia, 8645 Hayden Place, Culver City, California, 90232.

7. Defendant **J & D Sales, Inc. of Eau Claire, Wisconsin a/k/a J & D Manufacturing, Inc.** is a Wisconsin Corporation that maintains its principal place of business at 6200 US Highway 12, Eau Claire, Wisconsin 54701. This defendant can be served with process through its Registered Agent, Donovan Redetzke, 6200 US Highway 12, Eau Claire, Wisconsin 54701.

III. JURISDICTION AND VENUE

8. This action arises under the patent laws of the United States, Title 35 of the United States Code. The Court's jurisdiction over this action is proper under the above statutes, including 35 U.S.C. § 271 et seq. and 28 U.S.C. §§ 1331 and 1338(a).

9. Personal jurisdiction exists generally over Defendants pursuant to 28 U.S.C. § 1391 because they have sufficient minimum contacts with the forum as a result of business conducted within the State of Texas and within this District. Personal jurisdiction also exists specifically over Defendants because of Defendants' conduct in making, using, selling, offering to sell, and/or importing directly or indirectly infringing products or services within the State of Texas and within this District.

10. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400(b) for the reasons set forth above.

IV. BACKGROUND

11. This cause of action asserts infringement of United States Patent No. 6,789,787 B2 ("the '787 patent"). The '787 patent is entitled "Portable, Evaporative Cooling Unit having a Self-Contained Water Supply." The '787 patent was duly and legally issued on September 14, 2004. Tommy Stutts' work resulted in the patent-at-issue, and Mr. Stutts is the sole named inventor on the '787 patent. Mr. Stutts is the current owner of all rights, title, and interest under the '787 patent. Mr. Stutts has at all times maintained the rights and privileges regarding the '787 patent, including the right to bring legal action for infringement of the '787 patent.

12. Defendant Rapid Cool manufactures and sells mister equipment, fans, and components in the United States, including Texas, and particularly in this District. Rapid Cool's "Portable Misting Fog Fan with Tank" infringes one or more claims of the '787 patent, including without limitation, claim 9.

13. Defendant TPI manufactures and sells electric heating products, industrial fans, thermostats, task lighting, machine tool lights, and process equipment ovens in the United

States, including Texas, and particularly within this District. TPI's "Portable 18 Self Contained Power Mister" infringes one or more claims of the '787 patent, including without limitation, claim 9.

14. Defendant AQuality manufactures and sells, among other things, misting fans, high pressure misting systems, and evaporative coolers in the United States, including Texas, and particularly in this District. AQuality's "Port-A-Chill Stainless Steel 20 Gallon Portable Misting Fan" infringes one or more claims of the '787 patent, including without limitation, claim 9.

15. Defendant Lava Heat manufactures and sells, among other things, outdoor heating and misting equipment in the United States, including Texas, particularly in this District. One such product is the "Lava Heat Oasis," which infringes one or more claims of the '787 patent, including without limitation, claim 9.

16. Defendant J & D manufactures and sells, among other things, evaporative cooling products in the United States, including Texas, particularly in this District. J & D's "Portable Cooling Units" infringe one or more claims of the '787 patent, including without limitation, claim 9.

V. INFRINGEMENT OF U.S. PATENT NO. 6,789,787

17. The allegations of paragraphs 1–16 above are incorporated by reference as if fully set forth herein.

18. Defendants Rapid Cool, TPI, AQuality, Lava Heat, and J & D have infringed and continue to infringe the '787 patent by manufacturing, selling, and/or offering for sale the above-listed mobile misters and cooling fans with self-contained water supply. Plaintiff contends that such infringement is evidenced by the fact that each of Defendants' products

contain all of the limitations of at least claim 9 of the '787 patent. Defendants' websites, through which they advertise and sell the infringing products, are directed to and accessible from this District.

VI. INJUNCTION

19. The allegations of paragraphs 1–18 above are incorporated by reference as if fully set forth herein. Defendants will continue to infringe the '787 patent unless enjoined by this Court. Plaintiff therefore requests that this Court enter an order under 35 U.S.C. § 283 preliminarily and permanently enjoining Defendants from continuing to make, use, sell or offer for sale the products infringing the '787 patent.

VII. DAMAGES

A. Reasonable Royalty

20. The allegations of paragraphs 1–19 above are incorporated by reference as if fully set forth herein. For the above-described infringement, Plaintiff seeks damages to adequately compensate it for Defendants' infringement of the Patent. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

B. Enhanced Damages, Attorneys' Fees, and Expenses

21. The allegations of paragraphs 1–20 above are incorporated by reference as if fully set forth herein. Based on the listing of the patent-at-issue, the small size of the industry, the various Defendants' knowledge of the patent-at-issue, and the similarity of Defendants' products to Mr. Stutts' patented invention, Mr. Stutts contends that Defendants willfully infringed the '787 patent. Plaintiff requests that the Court enter a finding of willful infringement and enhanced damages under 35 U.S.C. § 284 up to three times the amount found by the trier of fact.

22. Plaintiff further requests that the Court enter an order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285. Pursuant to such an order, Plaintiff seeks recovery of its reasonable attorneys' fees and expenses.

VIII. VICARIOUS LIABILITY

23. The allegations of paragraphs 1–22 above are incorporated by reference as if fully set forth herein. In addition to liability for their own independent conduct, the Defendants are also liable for the conduct of their subsidiaries, affiliates, and related entities under the doctrines of alter ego and single business enterprise, and under applicable state and federal statutes and regulations.

PRAYER FOR RELIEF

Mr. Stutts respectfully requests the following relief:

- a. That the Court declare that the '787 patent is infringed by Defendants as described herein;
- b. That the Court enter a preliminary and permanent injunction against Defendants' direct infringement of the '787 patent;
- c. That the Court award damages to Mr. Stutts to which he is entitled for patent infringement;
- d. That the Court award pre and post-judgment interest on the damages to Mr. Stutts;
- e. That the Court treble all damages and interest for Defendants' willful infringement;
- f. That the Court award to Mr. Stutts his costs and attorney's fees incurred in this action; and

g. Such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff requests a jury trial of all issues triable of right by a jury.

Dated: November 28, 2011

Respectfully submitted,

_____/s/ Stafford Davis_____

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