

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

APOLLO INTELLECTUAL PROPERTIES,  
LLC,

*Plaintiff,*

vs.

MONSTER CABLE PRODUCTS INC.,

*Defendant.*

CASE NO.: 3:13-CV-92

ECF CASE

**JURY TRIAL DEMANDED**

**FIRST AMENDED COMPLAINT**

Plaintiff Apollo Intellectual Properties, LLC (“Apollo IP”), for its Complaint against Defendant Monster Cable Products Inc. (“Monster”) hereby alleges as follows:

**THE PARTIES**

1. Plaintiff Apollo IP is a limited liability company organized and existing under the laws of the State of New York with its principal place of business in New York, New York.

2. On information and belief, Defendant Monster Cable Products, Inc. (“Monster”) is a California corporation with its principal place of business at 455 Valley Drive, Brisbane, CA 94005. On information and belief, the Defendant has appointed David Tognotti, 455 Valley Drive, Brisbane, CA 94005, as its agent for service of process.

## **NATURE OF THE ACTION**

5. This is a civil action for infringement of United States Patent No. 5,838,776 (“the ‘776 Patent” or “the Patent-in-Suit”) (attached as Exhibit A) under the Patent Laws of the United States 35 U.S.C. § 1 *et. seq.*

## **JURISDICTION**

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

7. This Court has personal jurisdiction over Defendant because, among other things, Defendant has committed, aided, abetted, contributed to, and/or participated in the commission of patent infringement in this judicial district and elsewhere that led to foreseeable harm and injury to Apollo IP.

8. This Court also has personal jurisdiction over Defendant because, among other things, Defendant has established minimum contacts within the forum such that the exercise of jurisdiction over Defendant will not offend traditional notions of fair play and substantial justice. The Defendant has engaged in continuous and systematic activities in Tennessee. Moreover, Defendant has placed products that practice the claimed inventions of the Patent-in-Suit into the stream of commerce with the reasonable expectation and/or knowledge that purchasers and users of such products were located within this judicial district. And Defendant sold, advertised, marketed, and distributed products in this District that practice the claimed inventions of the Patent-in-Suit.

## VENUE AND CONVENIENCE

9. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391 and 1400(b) because, among other things, Defendant has committed acts of infringement in this judicial district, and are subject to personal jurisdiction here. Furthermore, the Eastern District of Tennessee is an appropriate venue to adjudicate this dispute because this District has a substantial nexus to the transactions and occurrences that form the bases for causes of action herein. Monster Cable sells the accused products through its website, shipping to all parts of the United States, including to this District, and to retailers such as Amazon.com and Best Buy, who then sell them directly to the public through retail outlets across the country or over the internet. The inventors of the '776 Patent are Kenneth W. Winters and James E. Adkins II. Mr. Winters is a resident of the State of Tennessee and resides in this District in Maynardville, Tennessee and Mr. Adkins is a resident of the State of Florida. During the time when the inventions claimed by the '776 Patent were conceived and reduced to practice, Mr. Adkins resided in Ohio and traveled frequently to Knoxville and Maynardville, Tennessee as well as to other areas within this District to work with Mr. Winters in order to reduce the inventions claimed by the '776 Patent to practice. Mr. Winters is a mathematician and engineer by background, training and experience and provided necessary technical expertise and knowledge required to reduce the invention to practice and otherwise took the lead on the technical aspects of the invention. Substantially all of the physical work required to build prototypes and embodiments of the inventions were performed in Maynardville, Tennessee and other parts of this District. Around the time that the patent application that resulted in the '776 Patent was being prepared and filed and after the '776 Patent issued, additional technical assistance was provided by Mr. Ted Satterfield and Mr. David

McNeilly. Both Mr. Satterfield and Mr. McNeilly were compensated to provide assistance to Mr. Winters. On information and belief, Mr. Satterfield and Mr. McNeilly reside in this District. Since the issuance of the '776 Patent, there have been substantial efforts on the parts of Mr. Adkins and Mr. Winter to commercialize the inventions claimed by the '776 Patent. Together, Mr. Adkins and Mr. Winters established manufacturing facilities in Maynardville, Tennessee and other parts of this District that predate the issuance of the '776 Patent and that still exist today. Substantially all of the documentation related to the inventions claimed by the '776 Patent, their conception and reduction to practice, and their commercialization and testing are in this District at facilities in Maynardville Tennessee and in other parts of this District. These materials include, but are not limited to, thousands of hard-copy documents, electronic files, computers and associated files, correspondence, contracts, financial records, sales records, prototypes, schematics, design plans, marketing materials, brochures, and manufacturing equipment. Since 2003, Congressman John "Jimmy" Duncan, who is the U.S. Representative for Tennessee's second congressional district, located in Knoxville, Tennessee has assisted through introductions to the U.S. Department of Energy in connection with commercialization and testing efforts with respect to the inventions claimed by the '776 Patent. OakRidge National Laboratory ("ORNL"), a U.S. Department of Energy facility that is in this District, was involved in testing of embodiments of the invention. Substantial testing was conducted by representatives of ORNL in this District as well as in other parts of United States, mainly along the eastern seaboard stretching from Florida to New York. Brendan Kirby, who at the time was at ORNL, and other representatives at ORNL, conducted substantial testing and collected substantial information and data that remained in the possession of ORNL. In addition to the activity at ORNL described above, embodiments of the '776 Patent were also tested at a test facility operated by Philips

Consumer Electronic's in Knoxville, Tennessee and also at the manufacturing facility in Maynardville, Tennessee as well as in parts of Florida, New York and other parts of the Midwest and eastern seaboard of the United States.

### **THE PATENT IN SUIT**

10. On November 17, 1998, the '776 Patent was duly and legally issued by the United States Patent and Trademark Office. Apollo IP is the assignee of all rights, title and interest in the '776 Patent, and Apollo IP possesses all rights to sue and recover for any current or past infringements of the '776 Patent.

11. The '776 Patent claims, among other things, products, systems and methods with power inputs and power outputs that monitor a parameter of the received power and remove and apply power after a predetermined event.

### **BACKGROUND FACTS**

12. Mr. James E. Adkins and Mr. Kenneth W. Winters ("Adkins" and "Winters" respectively) are inventors. During the 1990s, Adkins and Winters were innovators in power control technologies.

13. On August 23, 1996, Adkins and Winters filed a patent application with the United States Patent and Trademark Office ("USPTO"). The application issued on November 17, 1998 as the '776 Patent. The '776 Patent describes and claims technology that, among other things, provides for products, systems and methods with power inputs and power outputs that monitor a parameter of the received power and remove and apply power after a predetermined event.

14. Apollo IP has acquired all of the rights, title and interest of the inventors to the '776 Patent. Defendant manufactures, distributes and sells a wide array of power control products throughout the United States.

15. Like the inventions claimed by the '776 Patent, Defendant's products and systems provide, in relevant part, for systems and methods that contain power inputs and power outputs that monitor a parameter of the received power and remove and apply power under particular circumstances and that connect to power devices and power sources through standard electrical plugs.

## COUNT I

### Infringement of U.S. Patent No. 5,838,776

16. Paragraphs 1-15 are incorporated by reference as if fully restated herein.

17. Defendant has directly infringed and continues to directly infringe the '776 Patent under 35 U.S.C. § 271, either literally and/or under the doctrine of equivalents, in this judicial district and elsewhere in the United States. Defendant's infringement includes, without limitation, making and using embodiments of claims 3, 16, 29 and 43 of the '776 Patent.

18. Specifically, Defendant's direct infringement consists of making, using, offering for sale, selling, and/or importing into the United States products, systems and methods that contain power inputs and power outputs that monitor a parameter of the received power and remove and apply power after a predetermined event (the "776 Infringing Products"). The '776 Infringing Products include at least the power controls products of the Defendant according to the following:

- power input means for receiving power from a power source;

- power output means for outputting power to a power device;
- power control means for monitoring a parameter of the received power from the power input means, removing the output power from the power output means when the parameter falls outside a predetermined range, and reapplying the output power to the power output means after measuring a predetermined event; and
- where the power controller connects to the power device and the power source through sockets and/or plugs.

19. By way of example, the '776 Infringing Products include, but are not limited to, Monster Power products such as and at least the HDP line of products such as the HDP1250, HDP1400, HDP1800, HDP1850, and HDP2500; the HTS line of products such as the HTS1000, HTS1600, HTS1700, HTS1900, HTS2600 and HTS5100; the HTPS line of products; the HTUPS line of products such as the HTUPS2700 and HTUPS3700; and the Signature line of products and power centers such as the PRO5100.

20. As a result of the foregoing, Defendant is liable for literal direct infringement of the '776 Patent pursuant to 35 U.S.C. § 271(a).

21. To the extent that any fact finder deems any of the elements of the '776 Patent claims not literally satisfied by the '776 Infringing Products, the limitations of the claims of the '776 Patent are satisfied under the doctrine of equivalents

22. Apollo IP has been and continues to be damaged by Defendant's infringement of the '776 Patent.

## **PRAYER FOR RELIEF**

Wherefore, Plaintiff Apollo IP respectfully requests that this Court enter judgment against Defendant Monster. as follows:

- a) adjudging that the Defendant has infringed, literally or under the doctrine of equivalents, U.S. Patent No. 5,838,776;
- b) awarding Apollo IP the damages to which it is entitled under 35 U.S.C. § 284 for Defendant's past infringement and any continuing or future infringement up until the date Defendant is finally and permanently enjoined from further infringement, including both compensatory damages and ordering a full accounting of same;
- c) awarding Apollo IP pre-judgment and post-judgment interest on its damages; and
- d) awarding Apollo IP such other and further relief in law or equity that the Court deems just and proper.

## **DEMAND FOR JURY TRIAL**

Apollo IP hereby demands a trial by jury on all claims and issues so triable.

DATED: August 9, 2013

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