

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

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U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

NEX GEN WIRING, LLC, a Florida
limited liability company,

Plaintiff,

CASE NO.:

6:13-cv-1302-Orl-18TBS

LEVITON MANUFACTURING
COMPANY, INC., a Delaware corporation,

Defendant.

_____ /

COMPLAINT FOR PATENT INFRINGEMENT
JURY TRIAL AND INJUNCTIVE RELIEF REQUESTED

Plaintiff, NEX GEN WIRING, LLC, hereby sues Defendant, LEVITON
MANUFACTURING COMPANY, INC., and as grounds therefore alleges as follows:

PARTIES, JURISDICTION and VENUE

1. Plaintiff, NEX GEN WIRING, LLC (hereinafter referred to as "NEX GEN WIRING"), is a Florida limited liability company with its principal place of business located at 9346 Lake Hickory Nut Drive, Winter Garden, Florida 34787.

2. On information and belief Defendant, LEVITON MANUFACTURING COMPANY, INC., (hereinafter referred to as "LEVITON") is a Delaware corporation having a place of business located at 59-25 Little Neck Parkway, Little Neck, New York 11362.

3. This Court has subject matter jurisdiction for all counts pursuant to 28 U.S.C. §1338(a).

4. On information and belief, LEVITON conducts business within this State and/or judicial district; has committed a tortious act within this State and/or judicial district, including acts of infringement, within this State and/or judicial district; and, engages in substantial and not isolated activity within this state and/or this judicial district.

5. Venue is proper in the Middle District of Florida under 28 U.S.C. §§1391(b) and (c), and 28 U.S.C. §1400(b), and in this Division pursuant to Local Rule 1.02 of the United States District Court for the Middle District of Florida.

FACTS COMMON TO ALL COUNTS

6. On November 28, 2006, the United States Patent Office issued a patent, with a priority date of December 12, 2003, to Gary Dean Plankell for an APPARATUS FOR MOUNTING A TELEPHONE OR OTHER CORDLESS DEVICE IN A BUILDING STRUCTURE AND RELATED METHODS, U.S. Patent No. 7,141,736 (the “’736 Patent”). The ‘736 Patent discloses and claims a housing, apparatus and method for mounting a pair of signal-receiving devices, such as, but not limited to, telephone or other cordless devices, recessed within a building surface. A true and correct copy of the ‘736 Patent is attached hereto as Exhibit “A.”

7. On May 4, 2010, the United States Patent Office issued a patent, with a priority date of December 12, 2003, to Gary Dean Plankell for a RECESSED SIGNAL-RECEIVER MOUNTING SYSTEM FOR A BUILDING STRUCTURE AND ASSOCIATED METHODS, U.S. Patent No. 7,709,733 (the “’733 Patent”). The ‘733 Patent discloses and claims a system and method for mounting a pair of signal-receiving devices recessed within a building surface. A true and correct copy of the ‘733 Patent is attached hereto as Exhibit “B.”

8. On March 5, 2013, the United States Patent Office issued a patent, with a priority date of December 12, 2003, to Gary Dean Plankell for a RECESSED SIGNAL-RECEIVER MOUNTING SYSTEM FOR A BUILDING STRUCTURE AND ASSOCIATED METHODS, U.S. Patent No. 8,389,855 (the “‘855 Patent”). The ‘855 Patent discloses and claims a system for mounting a pair of signal-receiving devices recessed within a building surface. A true and correct copy of the ‘855 Patent is attached hereto as Exhibit “C.”

9. NEX GEN is the owner of legal title to the ‘736 Patent, ‘733 Patent and the ‘855 Patents through assignment which have been recorded with the United States Patent and Trademark Office.

10. On information and belief, Defendant, LEVITON, is a manufacturer and importer of electrical and electronic devices including apparatuses for mounting a pair of signal-receiving devices recessed within a building surface including, but not limited to, telephone or other cordless devices.

11. On information and belief, LEVITON, knowingly and willfully manufactures apparatuses for mounting a pair of signal-receiving devices recessed within a building surface including, but not limited to, telephone or other cordless devices as disclosed and claimed in the ‘736 Patent, ‘733 Patent and ‘855 Patent.

12. All conditions precedent to the institution and maintenance of this action have occurred or have been performed.

COUNT 1 – DIRECT INFRINGEMENT OF THE ‘736 PATENT

13. NEX GEN WIRING incorporates and realleges the allegations contained in paragraphs 1 through 12 above.

14. This is a cause of action against LEVITON pursuant to 35 U.S.C. § 271(a) and (g) for direct infringement of the '736 Patent.

15. On information and belief, LEVITON manufactures apparatuses for mounting a pair of signal-receiving devices recessed within a building surface including, but not limited to, telephone or other cordless devices as disclosed and claimed in the '736 Patent, without the authorization of NEX GEN WIRING, in violation of 35 U.S.C. § 271(a).

16. On information and belief, LEVITON offers for sale, sells and/or imports apparatuses for mounting a pair of signal-receiving devices recessed within a building surface including, but not limited to, telephone or other cordless devices as disclosed and claimed in the '736 Patent, in violation of 35 U.S.C. § 271(g).

17. On information and belief, LEVITON's acts of infringement are willful.

18. On information and belief, one or more acts of direct infringement have occurred in or from the Middle District of Florida, since the issuance of the '736 Patent; thereby giving rise to specific jurisdiction over LEVITON.

19. LEVITON's acts of direct infringement have damaged and will continue to damage NEX GEN WIRING, causing irreparable harm, for which there is no adequate remedy at law. Such unlawful acts and damage will continue to occur unless enjoined by this Court.

COUNT II – INDIRECT INFRINGEMENT OF THE '736 PATENT

20. NEX GEN WIRING incorporates and realleges the allegations contained in paragraphs 1 through 12 above.

21. This is a cause of action against LEVITON pursuant to 35 U.S.C. § 271(b) for indirect infringement of the '736 Patent.

22. On information and belief, LEVITON induces infringement of the '736 patent by providing direction and instruction to end users, such as through advertisements, how to infringe the '736 patent using at least one product manufactured and sold by LEVITON.

23. On information and belief, LEVITON's acts of infringement are willful.

24. On information and belief, one or more acts of indirect infringement have occurred in or from the Middle District of Florida, since the issuance of the '736 Patent; thereby giving rise to specific jurisdiction over LEVITON.

25. LEVITON's acts of indirect infringement have damaged and will continue to damage NEX GEN WIRING, causing irreparable harm, for which there is no adequate remedy at law. Such unlawful acts and damage will continue to occur unless enjoined by this Court.

COUNT III – DIRECT INFRINGEMENT OF THE '733 PATENT

26. NEX GEN WIRING incorporates and realleges the allegations contained in paragraphs 1 through 12 above.

27. This is a cause of action against LEVITON pursuant to 35 U.S.C. § 271(a) and (g) for direct infringement of the '733 Patent.

28. On information and belief, LEVITON manufactures apparatuses for mounting a pair of signal-receiving devices recessed within a building surface including, but not limited to, telephone or other cordless devices, as disclosed and claimed in the '736 Patent, without the authorization of NEX GEN WIRING, in violation of 35 U.S.C. § 271(a).

29. On information and belief, LEVITON offers for sale, sells and/or imports apparatuses for mounting a pair of signal-receiving devices recessed within a building surface including, but not limited to, telephone or other cordless devices as disclosed and claimed in the '736 Patent, in violation of 35 U.S.C. § 271(g).

30. On information and belief, LEVITON's acts of infringement are willful.

31. On information and belief, one or more acts of direct infringement have occurred in or from the Middle District of Florida, since the issuance of the '736 Patent; thereby giving rise to specific jurisdiction over LEVITON.

32. LEVITON's acts of direct infringement have damaged and will continue to damage NEX GEN WIRING, causing irreparable harm, for which there is no adequate remedy at law. Such unlawful acts and damage will continue to occur unless enjoined by this Court.

COUNT IV – INDIRECT INFRINGEMENT OF THE '733 PATENT

33. NEX GEN WIRING incorporates and realleges the allegations contained in paragraphs 1 through 12 above.

34. This is a cause of action against LEVITON pursuant to 35 U.S.C. § 271(b) for indirect infringement of the '733 Patent.

35. On information and belief, LEVITON induces infringement of the '733 patent by providing direction and instruction to end users, such as through advertisements, how to infringe the '733 patent using at least one product manufactured and sold by LEVITON.

36. On information and belief, LEVITON's acts of infringement are willful.

37. On information and belief, one or more acts of indirect infringement have occurred in or from the Middle District of Florida, since the issuance of the '733 Patent; thereby giving rise to specific jurisdiction over LEVITON.

38. LEVITON's acts of indirect infringement have damaged and will continue to damage NEX GEN WIRING, causing irreparable harm, for which there is no adequate remedy at law. Such unlawful acts and damage will continue to occur unless enjoined by this Court.

COUNT V – DIRECT INFRINGEMENT OF THE ‘855 PATENT

39. NEX GEN WIRING incorporates and realleges the allegations contained in paragraphs 1 through 12 above.

40. This is a cause of action against LEVITON pursuant to 35 U.S.C. § 271(a) and (g) for direct infringement of the ‘733 Patent

41. On information and belief, LEVITON manufactures apparatuses for mounting a pair of signal-receiving devices recessed within a building surface including, but not limited to, telephone or other cordless devices as disclosed and claimed in the ‘736 Patent, without the authorization of NEX GEN WIRING, in violation of 35 U.S.C. § 271(a).

42. On information and belief, LEVITON offers for sale, sells and/or imports apparatuses for mounting a pair of signal-receiving devices recessed within a building surface including, but not limited to, telephone or other cordless devices as disclosed and claimed in the ‘736 Patent, in violation of 35 U.S.C. § 271(g).

43. On information and belief, LEVITON’s acts of infringement are willful.

44. On information and belief, one or more acts of direct infringement have occurred in or from the Middle District of Florida, since the issuance of the ‘736 Patent; thereby giving rise to specific jurisdiction over LEVITON.

45. LEVITON’s acts of direct infringement have damaged and will continue to damage NEX GEN WIRING, causing irreparable harm, for which there is no adequate remedy at law. Such unlawful acts and damage will continue to occur unless enjoined by this Court.

COUNT VI – INDIRECT INFRINGEMENT OF THE ‘855 PATENT

46. NEX GEN WIRING incorporates and realleges the allegations contained in paragraphs 1 through 12 above.

47. This is a cause of action against LEVITON pursuant to 35 U.S.C. § 271(b) for indirect infringement of the '733 Patent.

48. On information and belief, LEVITON induces infringement of the '733 patent by providing direction and instruction to end users, such as through advertisements, how to infringe the '733 patent using at least one product manufactured and sold by LEVITON.

49. On information and belief, LEVITON's acts of infringement are willful.

50. On information and belief, one or more acts of indirect infringement have occurred in or from the Middle District of Florida, since the issuance of the '733 Patent; thereby giving rise to specific jurisdiction over LEVITON.

51. LEVITON's acts of indirect infringement have damaged and will continue to damage NEX GEN WIRING, causing irreparable harm, for which there is no adequate remedy at law. Such unlawful acts and damage will continue to occur unless enjoined by this Court.

PRAYER FOR RELIEF

52. NEX GEN WIRING requests the following relief for each stated cause of action:

A) An adjudication that Plaintiff's rights in each of the '736 Patent, '733 Patent, and '855 Patent are individually valid and enforceable;

B) An adjudication that Permanent injunctive relief enjoining all acts of infringement as provided under 35 U.S.C. § 283;

C) Compensatory damages as provided under 35 U.S.C. § 284;

D) Enhancement of damages as provided under 35 U.S.C. § 284;

E) An award of NEX GEN WIRING's reasonable attorney's fees and costs as provided under 35 U.S.C. § 285 and Rule 54(d), Fed.R.Civ.P.;

F) An award of prejudgment and post-judgment interest; and

G) Such other and further relief as the Court deems just, fair and appropriate.

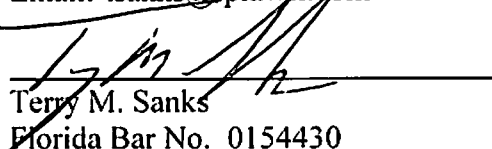
DEMAND FOR JURY TRIAL

Plaintiff hereby requests a trial by jury on all issues so triable.

DATED this 20th day of August, 2013.

Respectfully Submitted,

BEUSSE WOLTER SANKS
MORA & MAIRE, P.A.
390 N. Orange Avenue, Suite 2500
Orlando, FL 32801
Telephone: (407) 926-7700
Facsimile: (407) 926-7720
Email: tsanks@iplawfl.com


Terry M. Sanks
Florida Bar No. 0154430
Robert L. Wolter
Florida Bar No. 0906344