

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
- Northern Division -

Polk Audio, Inc.
5601 Metro Drive
Baltimore, MD 21202
(Baltimore City)

Plaintiff,

v.

GoldenEar Technology
2500 Caves Forest Road
Owings Mills, MD 21117
(Baltimore County)

and

Gramophone, Ltd.
4 W. Ayelsbury Road
Timonium, MD 21093
(Baltimore County)

and

Gramophone-WA1,LLC
8880 McGaw Road
Columbia, MD 21045
(Howard County)

Defendants.

Case No: 1:13-cv-2647

Jury Trial Demanded

COMPLAINT

Jurisdiction and Venue

1. Plaintiff Polk Audio, Inc. (“Polk Audio”) is a corporation organized under the laws of the State of Maryland in which jurisdiction it maintains its principal place of business.

2. Upon information and belief Defendant GoldenEar Technology (“GE”) is a corporation organized under the laws of the State of Maryland in which jurisdiction it maintains its principal place of business.

3. Upon information and belief Defendant Gramophone, Ltd. is a corporation organized under the laws of the State of Maryland in which jurisdiction it maintains its principal place of business.

4. Upon information and belief Gramophone-WA1, LLC is a limited liability company

organized under the laws of the State of Maryland in which jurisdiction it maintains its principal place of business.

5. Upon information and belief Gramophone, Ltd. and Gramophone-WA1, LLC are affiliated entities which may be referred to herein collectively as “Gramophone.”

6. This case arises under the patent laws of the United States and thus this Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1338.

7. Personal jurisdiction and venue in this action are predicated on 28 U.S.C. §1400(b) in that all Defendants are residents of this judicial district, have committed acts of infringement in this judicial district, and have one or more regular and established places of business in this judicial district.

Background Facts

8. Plaintiff is the owner of United States Letters of Patent 7,231,053 issued on June 12, 2007 (the “’053 Patent”). A copy of the ‘053 Patent is attached hereto and incorporated herein as Exhibit 1.

9. In general, the ‘053 Patent relates to loudspeakers that employ a unique design that allows a listener the sensation of being surrounded by the sound being produced through the loudspeaker even though there is no loudspeaker that is located behind the listener.

10. Plaintiff has commercially exploited the Patent by manufacturing and selling speakers under the trade name SURROUNDBAR™ in the State of Maryland and elsewhere.

11. Defendant GE manufactures and sells loudspeakers under the trademark “SuperCinema 3D.” It sells the accused devices from its own location and through a network of dealers including Defendants Gramophone

12. The SuperCinema 3D infringes the ‘053 Patent, at least in the following particulars:

A. The ‘053 Patent “Enhanced multi-channel audio surround sound from front located loudspeakers” covers use of an improved version of Polk’s SDA® technology in a soundbar style enclosure (as illustrated in, e.g., Fig. 5 and recited in claims 4, 5, 12 and 13 of Exhibit 1).

B. The SuperCinema 3D soundbar product infringes at least the claims of Polk’s ‘053 Patent (e.g.’s, claims 4, 5, 12 and 13) by including crosstalk cancellation speakers in a particular configuration. Specifically, the SuperCinema 3D includes left, center and right channel speakers

spaced precisely along an axis with a “second set of drivers that utilize 3D Array Technology to effectively cancel out this crosstalk distortion between the left and right channel” (quoting the GE SuperCinema 3D promotional literature). The SuperCinema 3D ’s “second set of drivers” are placed and configured solely to perform the crosstalk cancellation function of the Polk Surroundbar’s left and right “sub” speakers as described and claimed in the `053 patent.

13. The accused products are essentially knock offs of Plaintiff’s SURROUNDBAR™ loudspeakers.

14. Defendants Gramophone are dealers which sell and offer to sell GE’s SuperCinema 3D products in this judicial district.

15. Upon information and belief, GE offers to sell and sells its accused devices in many places other than Maryland through its network of dealers in addition to the dealer defendants in this action.

16. Upon information and belief, GE sells directly the accused devices to consumers who are located in this judicial district or who are located elsewhere but order from GE’s location in this judicial district.

17. Plaintiff has never licensed or otherwise consented to the activities of Defendants related to the invention disclosed in the Patent.

18. Plaintiff expended significant funds and resources to develop and market the patented technology which has come to be identified in the audio industry with Plaintiff.

19. Defendants do not have the right to sell or to offer to sell or to import or to use loudspeakers that infringe the Patent without the permission of Plaintiff as the patent owner and Plaintiff has not been asked for its permission nor has it granted any such permission.

20. Plaintiff has placed the required statutory notice on all the subject devices manufactured, imported and sold by it under the ‘053 Patent and while that Patent was in pending status, and had given multiple notices to Defendant GE that it has been infringing the said Patent.

21. Plaintiff has sent multiple demands that Defendant GE cease and desist its infringing activities. Despite the said demands Defendant GE has continued its said infringing

activities.

22. One of the principals in GE, Sandy Gross, was once an executive employed by Plaintiff and upon information and belief, Mr. Gross's infringing activities were done with full knowledge that the subject technology was the patented intellectual property of Plaintiff.

Claim

23. Based upon the foregoing, Defendants have, without authority of Plaintiff made, used, offered to sell, or sold within the United States and imported devices into the United States which infringe Plaintiff's '053 Patent during the term of the said Patent and/or have induced others to do so.

Wherefore, Plaintiff respectfully prays that:

A. It be adjudged that Plaintiff '053 Patent has been infringed by Defendants and that the Court issue a declaratory judgment to that effect;

B. Defendants be enjoined preliminarily and permanently from further infringements of the '053 Patent;

C. Defendants be required to account for their sales and profits from infringement of the '053 Patent;

D. Plaintiff be awarded damages against Defendants in an amount adequate to compensate Plaintiff for such infringements and in an amount not less than a reasonable royalty for the use made of Plaintiff's patented invention by Defendants trebled as to Defendant GE on account of the willful and intentional character of its infringing acts, together with interest and costs as fixed by the court, as provided by 35 U.S.C.A. § 284;

E. A declaration by the Court that this is an extraordinary case within the meaning of 35 U.S.C.A. § 285, and therefore award Plaintiff its legal fees;

F. Costs of this suit including reasonable attorney's fees.

G. Such other and further relief as to the Court seems just.

Respectfully submitted,

/s/ Robert N. Levin

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JURY TRIAL DEMANDED

Plaintiff demands trial by jury of all issues so triable herein.

/s/ Robert N. Levin

Robert N. Levin

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