

FILED
DISTRICT OF UTAH
-3 APR 03 PM 4:18
BY: _____
DEPUTY CLERK

Edgar R. Cataxinos (7162)
Greg T. Warder (9593)
TRASKBRITT, PC
230 South 500 East, Suite 300
P.O. Box 2550
Salt Lake City, UT 84110
Telephone: (801) 532-1922

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

| | |
|---|---|
| <p>FUTURA INDUSTRIES, INC., a Delaware corporation</p> <p>Plaintiff,</p> <p>v.</p> <p>80/20, INC., an Indiana corporation, and JOHN DOES I-X,</p> <p>Defendants.</p> | <p>Case No. <u>1:03CV=0041TS</u></p> <p>DECLARATORY JUDGMENT COMPLAINT</p> <p>(JURY DEMAND REQUESTED)</p> |
|---|---|

Plaintiff FUTURA INDUSTRIES, INC. (hereinafter "Futura Industries"), through its counsel, seeks a declaratory judgment against 80/20, INC. (hereinafter "80/20") and alleges as follows:

PARTIES

1. Plaintiff Futura Industries is a corporation duly organized and existing under the laws of the state of Delaware and having a principal place of business at Bldg. H-11 Freeport, Clearfield, Utah.

2. Upon information and belief, Defendant 80/20 is a corporation duly organized and existing under the laws of the state of Indiana and having a principal place of business at 1701 South 400 East, Columbia City, Indiana.

3. Upon information and belief, John Does 1-10 are: (a) partners or joint venturers of Defendant; and/or (b) participate in, contribute to, and/or have the ability to control the activities described herein. Plaintiffs do not presently know the identities and capacities of the Doe defendants. Plaintiffs will amend this Complaint to include such information when it is ascertained.

JURISDICTION AND VENUE

4. This is a civil action for declaratory judgment that U.S. Patent No. 5,429,438, issued July 4, 1995, and entitled "Mechanical Structure and Guide Block" (hereinafter "the '438 Patent") is not infringed. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 2201, and 2202.

5. This Court has personal jurisdiction over Defendant pursuant to the Utah Long Arm Statute, Utah Code Ann. § 78-27-24. Upon information and belief, Defendants transact business in Utah and solicit business in this judicial District.

6. Venue is proper in this District under 28 U.S.C. §§ 1391 (b) and(c), and 1400(b).

GENERAL ALLEGATIONS

7. The '438 Patent lists John D. Wood as the inventor and 80/20 as the assignee. A copy of the '438 Patent is attached hereto as **Exhibit A**. The '438 Patent includes two independent claims (Claims 1 and 14) and twenty three dependent claims (dependent from claims 1 and 14). Independent claim 1 recites a mechanical structure, comprising the elements of: (1) at least one extrusion having a plurality of sides and a longitudinal slot generally centrally positioned in each side; (2) a guide block having a plurality of guide surfaces disposed adjacent respective ones of said plurality of sides of the extrusion; and (3) a plurality of wear pads disposed between respective surfaces of the extrusion and guide surfaces of the guide block to reduce friction between the same, each wear pad having an alignment key positioned to be received within one of the slots of the extrusion, and a plurality of wear surfaces in load bearing contact with the adjacent surfaces of the extrusion. Independent claim 14 recites an apparatus for providing guided linear motion in a mechanical structure, comprising the elements of: (1) an extrusion having a generally rectangular cross-section and a channel on each side of the extrusion; (2) a linear slide for slidably receiving the extrusion in one of a plurality of orientations, the linear slide including a housing having a generally U-shaped cross-section and a plurality of bearings positioned, respectively, along inner surfaces of the U-shaped housing, each of the bearings having a body and a member positioned to lie within one of the channels of the extrusion so that the bearings cooperate with adjoining surfaces of the extrusion and channel in carrying load forces; and (3) means for attaching the bearings to the housing.

8. Futura Industries produces and sells linear bearing products for use with aluminum extrusions. Futura Industries' products include Single Flange Linear Bearing and Double Flange Linear Bearings. A copy of two pages of Futura Industries' current catalog

showing product specifications for the Single Flange Linear Bearings and the Double Flange Linear Bearings is attached hereto as **Exhibit B**. The Futura Industries linear bearing designs include a wear pad WP which is devoid of an alignment key or member that is configured to lie within a channel of an extrusion. Likewise, the wear pad WP is limited to a single surface that is in load bearing contact with an extrusion and does not cooperate with any channel surfaces.

9. On March 17, 2003, D. Randall Brown sent a letter on behalf of 80/20 to Susan D. Johnson at Futura Industries, stating that Futura Industries “is advertising and selling a linear bearing covered by the claims of U.S. [Patent] No. 5,429,438 (the “’438 Patent) owned by 80/20.” The letter further discussed payment of royalties for both future and past sales of Futura Industries’ linear bearing products under the ‘438 Patent. A copy of the letter from D. Randall Brown is attached hereto as **Exhibit C**.

10. An actual controversy exists between Futura Industries and 80/20 as to the infringement of the ‘438 Patent.

11. The linear bearing products produced and sold by Futura Industries do not infringe the ‘438 Patent.

12. Futura Industries does not induce others to infringe nor does it contribute to the infringement of the ‘438 Patent.

13. Futura Industries seeks a declaration that the ‘438 patent is not infringed by Futura Industries.

WHEREFORE, Plaintiff prays for the following relief:


- (a) A declaration that the ‘438 Patent is not infringed and an award of Plaintiff’s attorneys fees pursuant to 35 U.S.C. § 285;

- (b) An injunction against Defendants enjoining them from asserting or threatening to assert infringement under the '438 Patent against Plaintiff, its customers, suppliers, licensees, or others acting for or with Plaintiff, for any use, sale or offer for sale of Futura Industries' Single Flange Linear Bearing and Double Flange Linear Bearing products;
- (c) An award to Plaintiff of its costs, expenses, and such further relief the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims for relief

DATED this 2nd day of April, 2003.



Edgar R. Cataxinos (7162)
Greg T. Warder (9593)
TRASKBRITT, PC
230 South 500 East, Suite 300
P.O. Box 2550
Salt Lake City, UT 84110
Telephone: (801) 532-1922

Attorneys for Plaintiffs

Exhibits/
Attachments
to this document
have **not** been
scanned.

Please see the
case file.