

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 13-CV-02111-MSK-MJW

JERALD A. BOVINO,

Plaintiff,

v.

AMAZON.COM, INC.,

Defendant.

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**AMENDED COMPLAINT AND JURY DEMAND**

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Plaintiff Jerald A. Bovino, by and through counsel, the Fischer Law Firm, P.C. and the Patent Law Offices of Rick Martin, P.C., hereby asserts the following patent infringement complaint against Defendant Amazon.com, Inc., and states and avers as follows:

**I. THE PARTIES**

1. Plaintiff Jerald A. Bovino, M.D., (hereinafter “Plaintiff Bovino”) is a resident of the State of Colorado and resides at 804 Hunter Creek Road, Aspen, Colorado 81612.

2. Defendant Amazon.com, Inc. (“Defendant Amazon”) is a Corporation organized and existing under the laws of the State of Delaware. Defendant Amazon’s corporate headquarters and principal place of business is located at 410 Terry Avenue North, Seattle, Washington 98109. Their Registered Agent is Corporation Service, Co., 2711 Centerville Road, Wilmington, Delaware 19808.

**II. JURISDICTION AND VENUE**

3. This is an action for infringement of a United States patent arising under 35

U.S.C. §§271, 281, and 284-285, among others. This Court has subject matter jurisdiction of the action under Title 28 U.S.C. §1331 and §1338(a).

4. The Court has personal jurisdiction over Defendant Amazon, and venue is proper pursuant to 28 U.S.C. §§1391 and 1400(b). Defendant Amazon has substantial contacts with the forum as a result of pervasive business activities conducted within the State of Colorado and within this District, including but not limited to: (i) the marketing, sale and distribution of consumer products; and (ii) the marketing and sale of products for infringing portable computer cases.

5. Defendant Amazon has committed and continues to commit acts of patent infringement, directly and/or through agents and intermediaries, by making, using, selling, and/or offering for sale certain infringing products in Colorado. Specifically, Defendant Amazon sells (directly and/or through intermediaries) infringing portable computer cases in this District.

### **III. PATENT INFRINGEMENT**

6. On December 20, 2005, United States Patent No. 6,977,809 (hereinafter ‘809 Patent<sup>1</sup>) was duly and legally issued for a “Portable Computer Case.” A true and correct copy of the ‘809 Patent is attached hereto as **Exhibit 1**.

7. Plaintiff Bovino owns all rights, title, and interest in and to the ‘809 Patent and possesses all rights of recovery under said patent, including the right to prosecute this action and to collect damages for all relevant times.

8. As it pertains to this lawsuit, the ‘809 Patent is infringed by Defendant Amazon’s

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<sup>1</sup> Patent Abstract: “The present invention is directed to a portable computer having an integral case that incorporates a resilient material to protect the portable computer from wear and tear encountered when transporting and/or using the portable computer. The integral case also includes a retractable strap means that can be utilized to facilitate the transporting of the portable computer. The integral case for the portable computer also includes an identification pocket on the exterior surface of the integral case for incorporating identification documents for the portable computer.”

use, sale, offering for sale and/or manufacturing of Portable Computer Cases as detailed herein.

**COUNT I – INFRINGEMENT OF THE ‘809 PATENT**  
**DEFENDANT AMAZON**

9. Plaintiff Bovino incorporates each of the allegations of this Amended Complaint as if fully set forth herein.

10. Defendant Amazon has known of the '809 Patent since at least August 12, 2013, when a copy of the Complaint in this action, along with a copy of the '809 Patent, was served on Defendant Amazon.

11. Upon information and belief, Defendant Amazon has infringed and is continuing to directly infringe, contribute to the infringement of, and/or induce the infringement of, at least one claim of the '809 Patent without Plaintiff Bovino's consent or authorization. Such acts of infringement include, but are not limited to, Defendant Amazon's use, sale, and/or offer for sale of cases for various versions of PC & Apple cellular phones, computers, and tablets (iPad, iPad-Mini, Microsoft Surface, Kindle Fire, ASUS MeMO Pad, Samsung Galaxy, Motorola Moto X, etc.); more specifically described and attached hereto as **Exhibit 2**, Spreadsheet of Accused Products by Manufacturer.

12. Upon information and belief, Defendant Amazon's customers/persons using the cases identified in **Exhibit 2** infringe at least one claim of the '809 Patent. Upon information and belief, Defendant Amazon causes, urges, aids, advises, encourages, and/or otherwise induces infringement by Defendant Amazon's customers/persons who use such cases identified in **Exhibit 2**; such infringing conduct is carried out; and Defendant Amazon knows and intends that such cases identified in **Exhibit 2** infringe at least one claim of the '809 Patent.

13. Upon information and belief, Defendant Amazon's cases identified in **Exhibit 2** are especially made or especially adapted for use in an infringement of the '809 Patent, and are

not staple articles or commodities of commerce suitable for any substantial non-infringing use.

14. Upon information and belief, Defendant Amazon's aforementioned actions have been, and continue to be, committed in a knowing and willful manner and constitute willful infringement of the '809 Patent.

15. Plaintiff Bovino has no adequate remedy at law for Defendant Amazon's infringing acts.

16. As a direct result of Defendant Amazon's infringing acts, Plaintiff Bovino has suffered and continues to suffer damage and irreparable harm. Unless Defendant Amazon's infringing acts are enjoined by this Court, Plaintiff Bovino will continue to be damaged and irreparably harmed.

17. Defendant Amazon is liable to Plaintiff Bovino in an amount that adequately compensates him for Defendant Amazon's infringements, which by law cannot be less than a reasonable royalty, together with interest and costs as fixed by this Court under 35 U.S.C. §284.

18. Defendant Amazon is further responsible for the indirect infringement of the '809 Patent by providing products to customers, (a) inducing infringement by instructing its respective customers to use the provided products in an infringing manner, and (b) contributing to the infringement of the '809 Patent by providing the infringing products – products that have no substantial non-infringing use – to its respective customers who then infringe the '809 Patent through their infringing use of Defendant Amazon's products.

#### **IV. JURY DEMAND**

Plaintiff Bovino hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

#### **V. PRAYER FOR RELIEF**

Plaintiff Bovino requests that the Court find in its favor and against Defendant Amazon, and requests the Court to grant Plaintiff Bovino the following relief:

- a. For judgment that one or more claims of the '809 Patent have been infringed, either literally and/or under the doctrine of equivalents, by Defendant Amazon and/or by others to whose infringement Defendant Amazon has contributed and/or by others whose infringement has been induced by Defendant Amazon;
- b. For judgment for a reasonable royalty for said infringement;
- c. For pre-judgment and post-judgment interest on the damages caused by Defendant Amazon's infringing activities and other conduct complained of herein;
- d. To the extent the evidence supports it, that this Court declare that Defendant Amazon has acted willfully in infringement of the '809 Patent and award Plaintiff Bovino damages pursuant to 35 U.S.C. §284;
- e. To the extent the evidence supports it, that this Court declare this an exceptional case and award Plaintiff Bovino his reasonable attorney's fees and costs in accordance with 35 U.S.C. §285;
- f. Preliminary and permanently enjoin Defendant Amazon, their officers, agents, servants, employees, and representatives, and all others in active concert or participation with them, from further infringing, directly or indirectly, the '809 Patent; and
- g. That Plaintiff Bovino be granted all relief to which Plaintiff Bovino is otherwise entitled, and such other and further relief as the Court may deem just and appropriate under the circumstances.

DATED this 8th day of January, 2014.

Respectfully Submitted,

FISCHER LAW FIRM, P.C.

/s/ Ronnie Fischer

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