

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

KYNTEC CORPORATION,

Plaintiff,

-vs-

ITT ENIDINE, INC.,

Defendant.

**COMPLAINT FOR
DECLARATORY JUDGMENT**

Civil Action No. _____

JURY TRIAL DEMANDED

Plaintiff KYNTEC Corporation (“KYNTEC”), by and through its attorneys, Jaeckle Fleischmann & Mugel, LLP, as and for its Complaint herein, alleges as follows:

PARTIES

1. KYNTEC is a New York corporation having a principal place of business located at 2100 Old Union Road, Cheektowaga, New York.

2. KYNTEC is a manufacturer of engineered custom solutions for industrial, aerospace, and defense applications, including the manufacture of shock absorbers. Among the products manufactured by KYNTEC are shock absorbers that can be used in firearms to buffer recoil forces.

3. Upon information and belief, defendant ITT Enidine Inc. (“Enidine”) is a Delaware corporation having a principal place of business located at 7 Centre Drive, Orchard Park, New York.

4. Upon information and belief, Enidine is a supplier of shock absorbers.

JURISDICTION AND VENUE

5. This Court has jurisdiction over KYNTEC and Enidine, and over the subject matter of this action, under 28 U.S.C. §§ 1331, 1332, 1338 and 2201-2202, and under the doctrines of pendant and supplemental jurisdiction.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1400(b).

FACTUAL ALLEGATIONS

Enidine Patent

7. Upon information and belief, Enidine, through claimed inventors Timothy J. Boerschig ("Boerschig") and Brian C. Bucholtz ("Bucholtz"), claims to be the owner of U.S. Patent No. 7,131,367, titled "Hydraulic Bolt Buffer For Firearm" and issued November 7, 2006 (the "'367 Patent").

Letter from Enidine

8. On April 11, 2014, KYNTEC received a letter from counsel for Enidine stating that "[a] number of claims of the captioned '367 patent appear highly relevant to the Kynshot Model RB5000 recoil damper product, at a minimum, based on a careful engineering review." The letter further states that "Enidine has not authorized use under the '367 patent to Kyntec," that "to avoid further action, we herein require a detailed explanation of specific differences," and that "[i]f your company cannot provide such an explanation, we anticipate that Kyntec Corporation will immediately stop all manufacture and sale of their Kynshot recoil dampers and inform us of this decision." A true and accurate copy of the letter, which included a copy of the '367 Patent, is attached as **Exhibit A**.

9. Enidine's statements in its letter dated April 11, 2014 that the claims of the '367 patent appear highly relevant to KYNTEC's products, that Enidine has not given Kyntec

authorization under the '367 Patent, that Enidine requires an explanation of differences to avoid further action, and that Enidine anticipates KYNTEC will stop manufacture and sale of its products, has caused KYNTEC to reasonably and legitimately fear that Enidine will bring an infringement action against KYNTEC.

Invalidity of the '367 Patent and Inequitable and/or Fraudulent Conduct

10. Upon information and belief, Enidine, Boerschig, and/or Bucholtz deliberately concealed, misrepresented, and/or omitted material information and/or misled the United States Patent and Trademark Office (“USPTO”) during the examination of the application for the '367 Patent.

11. Upon information and belief, during the examination of the application for the '367 Patent, Enidine, Boerschig, and/or Bucholtz deliberately concealed, misrepresented and/or omitted material information, including, in particular and among other things, by failing to submit to the USPTO information concerning Enidine's own prior shock absorber products shown and described in its product catalogs, including but not limited to a catalog titled "Shock Absorber / Rate Control Product Catalog" published in September 2000 (the "Enidine Catalog"), and Enidine's own prior shock absorber products sold by Enidine, including, but not limited to, Enidine's TK Series and SH Series shock absorbers (the "Enidine Products") shown in the Enidine Catalog (the Enidine Catalog, Enidine Products, and any other relevant prior art are collectively referred to herein as the “Highly Material Prior Art References”).

12. The Highly Material Prior Art References anticipate and/or make obvious, either alone or in combination with other prior art, all of the claims of the '367 Patent.

13. On May 19, 2006, counsel for Enidine, Boerschig, and/or Bucholtz submitted argument to the examiner of the application for the '367 Patent that the claimed invention

differed from the prior art because "the accumulator of the present invention is provided within a stationary (i.e., fixed) bearing member and is therefore also stationary in relation to the assembly"

14. On July 25, 2006 the examiner of the application for the '367 Patent allowed the application and stated as the reason for the allowance that "[t]he closest prior art fails to disclose a stationary bearing member in fixed relation in said housing and retaining an accumulator in stationary relation along a primary axis of said buffer assembly wherein."

15. Page 10 of the Enidine Catalog shows two diagrams of example shock absorbers made and sold by Enidine. Each shock absorber diagram shows a stationary bearing member in fixed relation in a housing and retaining an accumulator in stationary relation along a primary axis of the shock absorber.

16. Had the examiner of the application for the '367 Patent been provided the Highly Material Prior Art References, the examiner would not have reasonably allowed the application to issue as a patent.

17. Upon information and belief, Enidine, Boerschig, and/or Bucholtz were aware of the Highly Material Prior Art References before and during prosecution of the application for the '367 Patent.

18. Enidine, Boerschig, and/or Bucholtz, either individually, together, or through their counsel, did not cite and/or submit the Highly Material Prior Art References to the USPTO during the prosecution of the application for the '367 Patent, notwithstanding both the materiality of these references to the claims of the '367 Patent and Enidine's, Boerschig's, and/or Bucholtz's actual knowledge of these references.

19. Upon information and belief, Enidine, Boerschig, and/or Bucholtz, with intent to deceive the USPTO during the prosecution of the application for the '367 Patent, concealed the material nature of the Highly Material Prior Art References, and knowingly and deliberately failed to submit and/or identify the material portions of the Highly Material Prior Art References to the USPTO.

20. Upon information and belief, a reasonable examiner would have considered the Highly Material Prior Art References to be important in deciding whether to allow the claims of the '367 Patent and/or would have considered them material to the patentability of the claims of the '367 Patent.

COUNT I

(DECLARATORY JUDGMENT OF NON-INFRINGEMENT)

21. KYNTEC repeats and reasserts all allegations in the paragraphs above as if they were stated in full herein.

22. KYNTEC has not infringed any claim of the '367 Patent.

23. KYNTEC has never induced, nor does it now induce, infringement of any claim of the '367 Patent.

24. KYNTEC has never contributorily infringed, nor does it now contributorily infringe, any claim of the '367 Patent.

25. KYNTEC is entitled to a declaratory judgment that it has not directly, contributorily, or by inducement, infringed any claim of the '367 Patent.

COUNT II

(DECLARATORY JUDGMENT OF INVALIDITY)

26. KYNTEC repeats and reasserts all allegations in the paragraphs above as if they were stated in full herein.

27. The '367 Patent is invalid for failure to comply with one or more provisions of Title 35 of the United States Code related to patentability.

28. KYNTEC is entitled to a declaratory judgment that the '367 Patent is invalid.

COUNT III

(DECLARATORY JUDGMENT OF UNENFORCEABILITY)

29. KYNTEC repeats and reasserts all allegations in the paragraphs above as if they were stated in full herein.

30. The '367 Patent is unenforceable because of Enidine's, Boerschig's, and/or Bucholtz's inequitable and/or fraudulent conduct before the USPTO in the prosecution of the application from which the '367 Patent issued.

31. KYNTEC is entitled to a declaratory judgment that the '367 Patent is unenforceable.

REQUEST FOR RELIEF

WHEREFORE, KYNTEC respectfully requests that:

1. Judgment be entered declaring that the '367 Patent is invalid, unenforceable, and not infringed by KYNTEC;

2. Judgment be entered declaring that KYNTEC has not contributorily infringed the '367 Patent and has not induced others to infringe the '367 Patent;

3. Judgment be entered awarding to KYNTEC the costs and disbursements of this action, together with interest and reasonable attorneys' fees pursuant to 35 U.S.C. § 285 and 15 U.S.C. § 1117;

4. Judgment be entered granting KYNTEC such other and further relief as this Court deems just and proper.

Dated: Buffalo, New York
April 14, 2014

JAECKLE FLEISCHMANN & MUGEL, LLP

By: /s/ Mitchell J. Banas, Jr.

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