

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

DIAMONDOP, LLC

Plaintiff,

v.

**GUARDIAN INDUSTRIES
CORPORATION (D/B/A GUARDIAN
INDUSTRIES and D/B/A GUARDIAN)**

Defendants.

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Civil Action No. 2:14-cv-00805

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

This is an action for patent infringement in which DiamondOP, LLC. (“DiamondOP”), by and through its undersigned counsel, submits this Complaint against GUARDIAN INDUSTRIES CORPORATION (D/B/A GUARDIAN INDUSTRIES and D/B/A GUARDIAN), as follows:

NATURE OF THE ACTION

1. This is a patent infringement action to stop Defendant’s infringement of United States Patent Nos. 6,537,668 (the “‘668 Patent”), 7,513,215 (the “‘215 Patent”), and 7,931,748 (the “‘748 Patent) (collectively, the “Patents-in-Suit”).

THE PARTIES

2. Plaintiff DiamondOP has an address at 211 East 7th Street, Suite 620, Austin, Texas 78701 and a place of business at 1226 Shattuck #1, Berkeley, CA 94709.

3. On information and belief, Defendant GUARDIAN INDUSTRIES CORPORATION (a/k/a GUARDIAN INDUSTRIES A/K/A GUARDIAN (hereinafter “Guardian” or “Defendant” is a corporation established under the laws of the State of Indiana, with its

principal place of business at 2300 Harmon Road, Auburn Hills, Michigan 48326.

JURISDICTION AND VENUE

4. This action arises under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. §§ 271, 281, 283, 284, and 285. This Court has subject matter jurisdiction over this case for patent infringement under 28 U.S.C. §§ 1331 and 1338(a).

5. The Court has personal jurisdiction over Defendant, including in connection with Defendant's business activities conducted in and out of Corsicana, Texas, including because Defendant has minimum contacts within the State of Texas; Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas; Defendant has sought protection and benefit from the laws of the State of Texas; Defendant regularly conducts business within the State of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas. Further, this Court has general jurisdiction over Defendant due to its continuous and systematic contacts with the State of Texas.

6. More specifically, Defendant, directly and/or through intermediaries, makes, distributes, imports, offers for sale, sells, advertises, and/or uses DiamondGuard glass in the State of Texas. Defendant has committed patent infringement in the State of Texas, has induced others to commit infringement in the State of Texas, and/or has contributed to patent infringement in the State of Texas. Defendant solicits customers in the State of Texas. Defendant has paying customers who are residents of the State of Texas and who purchase and/or use Defendant's infringing products and services in the State of Texas. Defendant has offices and/or manufacturing/storage facilities at least in the State of Texas at least in Corsicana, Texas, where it utilizes equipment and related tools that create the aforementioned

DiamondGuard products.

7. Venue is proper in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391 and 1400(b), including because Defendant has purposefully availed itself of the privileges of conducting business in the Eastern District of Texas; Defendant regularly conducts business within the Eastern District of Texas; and Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the Eastern District of Texas.

8. More specifically, Defendant, directly and/or through intermediaries, distributes, imports, offers for sale, sells, advertises, and/or uses, DiamondGuard in the Eastern District of Texas. Defendant has committed patent infringement in the Eastern District of Texas, has induced others to commit infringement in the Eastern District of Texas, and/or has contributed to patent infringement in the Eastern District of Texas. Defendant solicits customers in the Eastern District of Texas. Defendant has paying customers who are residents of Eastern District of Texas and who purchase and/or use the Defendant's products and services in the Eastern District of Texas. Further, Defendant has continuous and systematic contacts with the Eastern District of Texas.

COUNT I – INFRINGEMENT OF U.S. PATENT NO. 6,537,668

9. DiamondOP refers to and incorporates herein the allegations of Paragraphs 1-8 above.

10. The '668 Patent, entitled "Recording Media Having Protective Overcoats of Highly Tetrahedral Amorphous Carbon and Methods for their Production," was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on March 25, 2003 after full and fair examination. Plaintiff is assignee of the '668 Patent and has standing to bring this lawsuit, including the right to recover damages for past, present and future infringement of the

patent.

11. The claims of the '668 Patent cover, *inter alia*, an article comprising: a substrate; and a layer disposed over the substrate, the layer comprising a highly tetrahedral amorphous carbon having more than about 15% sp³ carbon-carbon bonds and a single peak Raman spectrum, the layer further comprising at least one of hydrogen and nitrogen; wherein a percentage of sp³ carbon-carbon bonds in the layer increases as a layer thickness decreases.

12. Defendant makes, distributes, offers for sale, sells, advertises, and/or uses, within the United States, without limitation, diamond coated glass articles, namely products which comprise, *inter alia*, a substrate; and a layer disposed over the substrate, the layer comprising a highly tetrahedral amorphous carbon having more than about 15% sp³ carbon-carbon bonds and a single peak Raman spectrum, the layer further comprising at least one of hydrogen and nitrogen; wherein a percentage of sp³ carbon-carbon bonds in the layer increases as a layer thickness decreases. Defendant infringes the '668 Patent by and through at least the making, using, selling and/or offering to sell infringing products comprising at least Guardian DiamondGuard Glass (including at least DiamondGuard Clear and DiamondGuard UltraMirror).

13. Additionally, Defendant has induced infringement of the '668 Patent in this judicial district, the State of Texas, and elsewhere in the United States, by actions comprising intentionally inducing infringement of the '668 Patent in this judicial district, the State of Texas, and elsewhere in the United States, including by aiding or abetting at least its customers and other end users to use said products. Upon information and belief, such induced infringement has occurred at least since Defendant became aware of the '668 Patent. On information and belief, one of the inventors of the '668 Patent, Vijayen Veerasamy, was already in Defendant's employ as a researcher and/or scientist at the time that the '668 Patent issued in March 2003.

Defendant has had knowledge of its infringement since at least the issuance of the '668 Patent. Defendant has made and sold DiamondGuard glass since at least November 2003. Defendant's inducement of infringement involves Defendant's knowledge that the induced acts constitute patent infringement.

14. Each of Defendant's aforesaid activities has been without authority and/or license from Plaintiff.

15. Further, Defendant's infringement is and has been willful. On information and belief, one of the inventors of the '668 Patent, Vijayen Veerasamy, was already in Defendant's employ as a researcher and/or scientist at the time that the '668 Patent issued in March 2003. Defendant has had knowledge of its infringement of the '668 Patent at least since Defendant began making and selling DiamondGuard glass, which is at least since November 2003.

16. Defendant's awareness of the '668 Patent and infringement of at least the products noted above constitutes an objectively high likelihood that Defendant's actions constituted infringement of a valid patent.

17. Plaintiff is entitled to recover from Defendant the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, 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.

COUNT II – INFRINGEMENT OF U.S. PATENT NO. 7,513,215

18. DiamondOP refers to and incorporates herein the allegations of Paragraphs 1-17 above.

19. The '215 Patent, entitled "Systems and Methods for the Production of Highly Tetrahedral Amorphous Carbon Coatings," was duly and legally issued by the United States

Patent and Trademark Office (“USPTO”) on April 7, 2009 after full and fair examination. Plaintiff is assignee of the ‘215 Patent and has standing to bring this lawsuit, including the right to recover damages for past, present, and future infringement of the patent.

20. The claims of the ‘215 Patent cover, *inter alia*, a device for generating an ion stream with a controlled ion energy to make diamond like carbon, the device comprising: a first electrode having a first surface area; a second electrode having a second surface area, the first and second surface areas arranged to generate a plasma with ions between the first and second surface areas; wherein the first electrode is adapted to provide a DC bias to the plasma and energize the ions to form an ion stream with a controlled ion impact energy, wherein the ion impact energy is selectively controlled by the DC bias of the first electrode; and wherein the ion stream comprises carbon and the controlled ion impact energy is capable of promoting the formation of a diamond like coating comprising at least 15% sp³ carbon-carbon bonds.

21. Defendant has at least made and used, in the United States, *inter alia*, a device for generating an ion stream with a controlled ion energy to make diamond like carbon, the device comprising: a first electrode having a first surface area; a second electrode having a second surface area, the first and second surface areas arranged to generate a plasma with ions between the first and second surface areas; wherein the first electrode is adapted to provide a DC bias to the plasma and energize the ions to form an ion stream with a controlled ion impact energy, wherein the ion impact energy is selectively controlled by the DC bias of the first electrode; and wherein the ion stream comprises carbon and the controlled ion impact energy is capable of promoting the formation of a diamond like coating comprising at least 15% sp³ carbon-carbon bonds. Defendant infringes the ‘215 Patent by and through at least its devices for making Guardian DiamondGuard Glass (including at least DiamondGuard Clear and DiamondGuard

UltraMirror), with certain such devices sometimes being referred to as a Guardian linear ion beam source or GIBS.

22. Each of Defendant's aforesaid activities has been without authority and/or license from Plaintiff.

23. Further, Defendant's infringement is and has been willful. On information and belief, one of the inventors of the '215 Patent, Vijayen Veerasamy, was already in Defendant's employ as a researcher and/or scientist at the time that the '215 Patent issued in April 2009. Defendant has had knowledge of its infringement of the '215 Patent at least since issuance of the patent in April 2009.

24. Defendant's awareness of the '215 Patent and infringement of at least the devices noted above constitutes an objectively high likelihood that Defendant's actions constituted infringement of a valid patent.

25. Plaintiff is entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, 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.

COUNT III – INFRINGEMENT OF U.S. PATENT NO. 7,931,748

26. DiamondOP refers to and incorporates herein the allegations of Paragraphs 1-25 above.

27. The '748 Patent, entitled "Systems and Methods for the Production of Highly Tetrahedral Amorphous Carbon Coatings," was duly and legally issued by the United States Patent and Trademark Office ("USPTO") on April 26, 2011 after full and fair examination. Plaintiff is assignee of the '748 Patent and has standing to bring this lawsuit, including the right

to recover damages for past, present, and future infringement of the patent. The claims of the '748 Patent cover, *inter alia*, a method of forming a layer of diamond like carbon with an ion stream, the method comprising: generating a plasma; varying a DC bias voltage to selectively control an ion impact energy of the ion stream; applying the DC bias voltage to the plasma to generate the ion stream; and forming the layer of diamond like carbon having a thickness of less than about 75 Å with the ion stream having the controlled energy.

28. Defendant has at least used and practiced, in the United States, *inter alia*, a method of forming a layer of diamond like carbon with an ion stream, the method comprising: so generating a plasma; varying a DC bias voltage to selectively control an ion impact energy of the ion stream; applying the DC bias voltage to the plasma to generate the ion stream; and forming the layer of diamond like carbon having a thickness of less than about 75 Å with the ion stream having the controlled energy. Defendant infringes the '748 Patent by and through at least its use of devices for making Guardian DiamondGuard Glass (including at least DiamondGuard Clear and DiamondGuard UltraMirror), with certain such devices sometimes being referred to as a Guardian linear ion beam source or GIBS.

29. Each of Defendant's aforesaid activities has been without authority and/or license from Plaintiff.

30. Further, Defendant's infringement is and has been willful. On information and belief, one of the inventors of the '748 Patent, Vijayen Veerasamy, was already in Defendant's employ as a researcher and/or scientist at the time that the '748 Patent issued in April 2011. Defendant has had knowledge of its infringement of the '748 Patent at least since issuance of the patent in April 2011.

31. Defendant was further made aware of the specific way in which its products

infringed the '748 Patent at least because, upon information and belief, Defendant has unlawfully copied the technology of the '748 Patent, with at least the aid of Mr. Veerasamy.

32. Defendant's awareness of the '748 Patent and infringement of at least the above noted methods constitutes an objectively high likelihood that Defendant's actions constituted infringement of a valid patent.

33. Plaintiff is entitled to recover from Defendants the damages sustained by Plaintiff as a result of Defendant's wrongful acts in an amount subject to proof at trial, 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.

JURY DEMAND

34. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure on all issues so triable.

PRAYER FOR RELIEF

35. Plaintiff respectfully requests that the Court find in its favor and against Defendant, and that the Court grant Plaintiff the following relief:

- A. An adjudication that one or more claims of the Patents-in-Suit has been directly and/or indirectly infringed, either literally and/or under the doctrine of equivalents, by Defendant;
- B. An award to Plaintiff of damages adequate to compensate Plaintiff for Defendant's acts of infringement, together with pre-judgment and post-judgment interest;
- C. A grant of permanent injunction pursuant to 35 U.S.C. § 283, enjoining Defendant and all persons acting in concert therewith from further acts of infringement with respect to the claims of the Patents-in-Suit;

- D. That this Court declare that Defendant's infringement has been, and continues to be, willful, including that Defendant acted to infringe the Patents-in-Suit despite an objectively high likelihood that its actions constituted infringement of a valid patent and, accordingly, award enhanced damages, including treble damages, pursuant to 35 U.S.C. § 284;
- E. That this Court declare this to be an exceptional case and award Plaintiff reasonable attorneys' fees and costs in accordance with 35 U.S.C. § 285; and
- F. Any further relief that this Court deem just and proper.

Date: July 30, 2014

Respectfully submitted,

/s/ John J. Edmonds

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