

3. Tannerite is an Oregon Limited Liability Company with its principal place of business at 36366 Valley Road, Pleasant Hill, Oregon 97455.

4. Daniel Tanner is a United States Citizen with principal place of residence at 36366 Valley Road, Pleasant Hill, Oregon 97455.

II. JURISDICTION AND VENUE

5. This is an action for patent infringement under the Patent Act, 35 U.S.C § 271.

6. This Court has personal jurisdiction over H2Targets, in part, because H2Targets has a principal place of business in the Northern District of Ohio; has customers that reside in the Northern District of Ohio; makes, sells, and uses infringing products in the Northern District of Ohio; has solicited business and has attempted to derive financial benefit from residents of the Northern District of Ohio, including benefits directly related to the instant cause of action set forth herein; and has committed and continues to commit acts of patent infringement in this District.

7. This Court has subject matter jurisdiction by virtue of Sections 1331 and 1338(a) of Title 28, United States Code.

8. Venue in this Court is proper by virtue of Sections 1391 (b) and (c) and 1400(b) of Title 28, United States Code.

III. BACKGROUND

A. Tannerite and the Tannerite Patent

9. At a young age, Daniel Tanner's interest and fascination with special effects was fostered by his grandfather in his workshop. After many years of encouragement, Daniel Tanner obtained an ATF federal license, and he began earnestly experimenting to create a safe binary exploding target. Daniel Tanner is a pioneer of binary exploding targets specifically designed to

be safe and non-flammable, whether it's sitting on a shelf, being mixed or used. When shot with a high-power rifle, it produces water vapor and a thunderous boom. Tannerite® is the shot indicator target of choice for hunters, law enforcement, and U.S. armed services.

10. Tannerite manufactures, sells, and distributes Tannerite®-brand binary exploding rifle targets, which practice at least one claim of the '386 patent. Tannerite's products are sold to be used as shot indicators for target practice at a rifle range. Tannerite's products utilize high-quality components to ensure the explosion of a Tannerite product is non-incendiary. Tannerite's products are sold as ¼-pound- and ½-pound-size targets to minimize noise disturbances or projectiles that could be created through the explosion of the target. Tannerite is licensed to manufacture explosives, however, consumer users of binary exploding targets do not require any licensure to purchase, make, or use the Tannerite-brand products when the user follows the directions for using Tannerite-brand binary exploding rifle targets.

11. On February 1, 2005, United States Patent No. 6,848,366 ("the '366 patent,") was duly and legally issued for an invention on binary exploding rifle targets.

12. On August 16, 2005, Daniel Tanner, the sole inventor of the '366 patent, filed a reissue patent application on the '366 patent.

13. On July 23, 2013, United States Patent No. RE44,386 ("the '386 patent") was duly and legally issued from the reissue application of the '366 patent. The title of the "'386 patent is "Binary Exploding Target, Package Process and Product." A true and correct copy of the "'386 patent is attached as Exhibit A.

14. Tannerite is the owner by way of assignment by Daniel Tanner of 50% of the entire interest in the '386 patent. Daniel Tanner owns the remaining 50% interest in the entire '386 patent.

B. H2Targets' Infringing Products and Related Actions

15. H2Targets has made, used, offered for sale and sold, and makes, uses, offers for sale, and sells in the United States binary exploding rifle targets accused of infringement.

16. On information and belief, the binary exploding rifle targets made, used, offered for sale, and sold by H2Targets are sold under at least the brand name H2 (the "Accused Products").

17. The Accused Products are binary exploding rifle targets, nearly identical to Plaintiff's products, wherein the Accused Products consist of two containers—one container containing an oxidizer (ammonium nitrate) and a second container containing a catalyst (aluminum powder). The Accused Products instruct the end user to, *inter alia*, combine the contents of the two containers into a container, mix the contents, set the container with the combined contents at a location to be used for a shooting exercise, and fire a center-fire rifle round at the container with the combined contents to explode the container.

18. H2Targets' nearly identical Accused Products lead to confusion in the marketplace with respect to Plaintiff's products. For example, H2Targets Accused Products feature prominently upon conducting a Google® Search for "Tannerite".

19. The nearly identical Accused Products directly compete with Tannerite's products in the marketplace. The sale of the Accused Products directly and irreparably harms Tannerite's reputation, good will, and market share in the industry of the binary exploding target. Tannerite is known in the industry as the creator of the market for binary exploding rifle targets.

20. Upon information and belief, the nearly identical Accused Products utilize a low-quality oxidizer in its product, which, when combined with the catalyst and exploded create a fireball which may cause brush and/or forest fires. Such fires have already caused irreparable

harm to the Tannerite brand because the fires have originated from H2Targets nearly identical accused products.

21. Upon information and belief, the Accused Products are sold as larger sizes, such as two-pound targets, which create excessive noise and projectiles upon explosion, endangering nearby users and onlookers, and creating unwanted noise in nearby communities. For example, in a recent Ohio case, Tannerite was sued because H2Targets nearly identical Accused Products caused irreparable bodily harm to an individual. Tannerite was named in this suit even though the incident involved no Tannerite products, due to marketplace confusion.

22. Upon information and belief, the United States Forest Service has banned the use and possession of all binary exploding rifle targets on most of its timber lands due to the Accused Products creating a fireball when exploded.

23. Upon information and belief, certain jurisdictions, such as the State of Maryland, are drastically limiting the purchase, use, and sales of binary exploding rifle targets, including Tannerite®-brand binary exploding rifle targets, due to excessive noise and dangerous conditions caused by the Accused Products.

IV. CAUSES OF ACTION

A. Infringement of U.S. Patent No. RE44,386

24. H2Targets has, without authority, consent, right, or license, infringed and is infringing at least claim 25 of the '386 patent directly under 35 U.S.C. § 271(a) by making, using, selling, and offering for sale in the United States the Accused Products, and will continue to do so unless enjoined by the Court.

25. Customers and end users of H2Targets have, without authority, consent, right, or license, infringed and are infringing the '386 patent directly under 35 U.S.C. § 271(a) by making and using in the United States the Accused Products by exploding the Accused Products.

26. H2Targets has had knowledge that the Accused Products infringe the '386 patent since at least October 18, 2013, when H2Targets received from Plaintiffs' counsel a letter enclosing a copy of the '386 patent and stating the invention of the '386 patent was directed to binary exploding rifle targets.

27. H2Targets has purposefully caused, encouraged, and urged customers and end users to make and use the Accused Products in the United States with the knowledge and intent that such activities would directly infringe the '386 patent, and intended customers and end users to carry out such activities. H2Targets has purposefully caused, encouraged, and urged customers and end users to make and use the Accused Products through, *inter alia*, instructions provided with the Accused Products and instructions and demonstrations made by H2Targets at its website at <http://h2targets.com/products.html> and <http://h2targets.com/video.html>.

H2Targets has had such knowledge and intent at least since receiving through its counsel a letter from Plaintiffs' counsel on October 18, 2013. H2Targets further has such knowledge and intent because H2Targets had engaged in negotiations in obtaining a possible license on the '386 patent, but ultimately did not materialize into a license agreement by H2Targets.

28. H2Targets therefore induces under 35 U.S.C. § 271(b) customers' and end users' direct infringement of the '386 patent, and will continue to do so unless enjoined by this Court.

29. H2Targets is liable for contributory infringement under 35 U.S.C. § 271(c) as it has knowledge that its products and/or product components are especially made or adapted for use in infringement of one or more claims of the '386 patent.

30. H2Targets' products and/or product components are material components of a combination, where the combination is used to practice one or more claims of the '386 patent.

31. H2Targets' products and/or product components are specifically made for use in combination and are not a staple article of commerce suitable for a substantial non-infringing use.

32. As a result of H2Targets' infringement, Plaintiffs have suffered and will continue to suffer damages in an amount to be proven at trial.

33. The acts of infringement set forth above have occurred with full knowledge of the '386 patent. The infringement has occurred despite an objectively high likelihood that the acts constituted infringement. The risk of infringement was either known to H2Targets, or so obvious it should have been known to them. This willful and deliberate conduct by H2Targets makes this an exceptional case as provided in 35 U.S.C § 285.

34. As a result of H2Targets infringement, Plaintiffs have been damaged, and will continue to be damaged, until H2Targets are enjoined from further acts of infringement.

35. Plaintiffs face real, substantial and irreparable damage and injury of a continuing nature from H2Targets infringement for which Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

(a) That this Court find H2Targets has committed acts of patent infringement under the Patent Act, 35 U.S.C § 271;

(b) That this Court enter judgment that:

(i) Plaintiffs are the owners of the '386 Patent and all rights of recovery under the '386 Patent;

- (ii) the Plaintiffs' '386 Patent is valid and enforceable; and
- (iii) H2Targets has willfully infringed the Plaintiffs' '386 Patent;

(c) That this Court issue an preliminary injunction enjoining the defendant, its officers, agents, servants, employees and attorneys, and any other person in active concert or participation with them, from continuing the acts herein complained of, and more particularly, that the defendant and such other persons be permanently enjoined and restrained from further infringing the '386 patent;

(d) That this Court issue a permanent injunction, enjoining H2Targets and its officers, directors, agents, servants, employees, affiliates, divisions, branches, subsidiaries, parents, and all others acting in concert or privity with them from infringing or inducing the infringement of the '386 patent;

(e) That this Court award Plaintiffs the damages to which they are entitled due to H2Targets' patent infringement with both pre-judgment and post-judgment interest;

(f) That H2Targets' infringement of the "'386 Patent be adjudged willful and that the damages to Plaintiffs be increased by three times the amount found or assessed pursuant to 35 U.S.C. § 284;

(g) That this Court enter a judgment and order requiring H2Targets to pay the costs of this action (including all disbursements), as well as attorneys' fees as provided by 35 U.S.C. § 285;

(h) Such other further relief in law or equity to which Plaintiffs may be justly entitled.

JURY DEMAND

Plaintiffs demand a trial by jury.

Dated: September 11, 2014

Respectfully submitted,

HAHN LOESER & PARKS, LLP

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