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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO**

JERALD A. BOVINO,

Plaintiff,

vs.

INCASE DESIGNS, CORP,

Defendant.

Case No. 14-cv-02105-VC

**SECOND AMENDED COMPLAINT
AND JURY DEMAND**

Plaintiff Jerald A. Bovino, by and through counsel, the Fischer Law Firm, P.C., the Patent Law Offices of Rick Martin, P.C., and Bovino Railsback, L.L.P., hereby asserts the following patent infringement complaint against Defendant Incase Designs, Corp, 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, residing at 804 Hunter Creek Road, Aspen, Colorado 81612.

2. Defendant Incase Designs, Corp (hereinafter “Defendant Incase”) is a Corporation organized and existing under the laws of the State of California, having a principal place of business located at 14351 Pipeline Avenue, Chino, California 91710. Defendant Incase’s registered agent is Jeremy F. Lawrence, 1214 Allen Avenue, Erie, Colorado 80516.

II. JURISDICTION AND VENUE

3. This is an action for infringement of a United States patent arising under 35 U.S.C. §§ 271(b), 271(c), 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 Incase and venue is proper in the United States District Court for the Northern District of California, San Francisco, pursuant to the Court *Order Granting Defendant’s Motion to Transfer Venue* dated, May 6, 2014, in the United States District Court for the District of Colorado. (Dkt. No. 54).

III. THE ASSERTED PATENT

5. On December 20, 2005, the U.S. Patent and Trademark Office duly and legally issued U.S. Patent No. 6,977,809 (hereinafter ‘809 Patent¹) for a “Portable Computer Case.” A true and correct copy of the ‘809 Patent is attached hereto as **Exhibit 1** and incorporated herein by reference.

¹ 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.”

6. 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.

7. The '809 Patent is valid and enforceable.

IV. GENERAL ALLEGATIONS

8. Defendant Incase makes Portable Computer Cases, including but not limited to, the *Book Jacket*, *Magazine Jacket*, and *Maki Jacket* series cases for the iPad 2, the iPad 3, the iPad 4, and the iPad mini (hereinafter "Infringing Products")

9. Defendant Incase has and continues to make, market, offer for sale, and/or sell the Infringing Products that induce and/or contribute to the infringement of the '809 Patent by others, including but not limited to, customers and/or resellers (namely, Apple Stores, Best Buy, Target, and select boutiques in the U.S.). *See, Exhibit 2*, Screenshot from Defendant Incase's Website.

10. Plaintiff Bovino has been damaged as a result of Defendant Incase's infringing conduct.

11. Defendant Incase is liable to Plaintiff Bovino in an amount that adequately compensates him for Defendant Incase'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.

V. PATENT INFRINGEMENT

COUNT I – INDIRECT INFRINGEMENT OF THE '809 PATENT

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

13. Defendant Incase has had actual knowledge of the '809 Patent since at least

September 2, 2013, when a copy of the original Complaint in this action, along with a copy of the '809 Patent, was served on Defendant Incase.

14. Defendant Incase has induced and continues to induce and contribute to the infringement of the '809 Patent by intending that others (such as customers and/or resellers) use, market, offer for sale, and/or sell products covered by one or more claims of the '809 Patent, including but not limited to, the Infringing Products.

15. Customers and/or resellers of the *Book Jacket*, *Magazine Jacket*, and *Maki Jacket* series use, market, offer for sale, and/or sell the Portable Computer Cases for the iPad 2, the iPad 3, the iPad 4, and the iPad mini.

16. Defendant Incase indirectly infringes the '809 Patent by inducing infringement by others, such as customers and/or resellers, in accordance with 35 U.S.C. § 271(b) in this District and elsewhere in the United States.

17. Direct infringement of at least one claim of the '809 Patent is the result of activities (use, market, offer for sale, and/or sale) performed by the customers and/or resellers of the Infringing Products.

18. Upon information and belief, Defendant Incase designed the Infringing Products such that they would each infringe one or more claims of the '809 Patent if made, used, sold, and/or offered for sale.

19. Defendant Incase provides the Infringing Products to others, such as customers and/or resellers who, in turn, use, market, offer for sale, and/or sell the Infringing Products that infringe one or more claims of the '809 Patent.

20. Upon information and belief, through its manufacture and sale of the Infringing Products, Defendant Incase specifically intended its customers and/or resellers to infringe one or

more claims of the '809 Patent.

21. Upon information and belief, Defendant Incase specifically intended for others, such as customers and/or resellers, to directly infringe one or more claims of the '809 Patent.

22. Through Defendant Incase's marketing on its website www.goincase.com, Defendant Incase causes, urges, aids, advises, and encourages customers and/or resellers to use the Infringing Products.

23. Defendant Incase's marketing specifically identifies different Portable Computer models with which its Infringing Products are compatible and markets the Infringing Products to be used as complete protection for the various Portable Computers models. *See, Exhibit 3*, Screenshot from Defendant Incase's Website.

24. Defendant Incase's marketing specifically provides instructions, user information, and/or other design information to customers and/or resellers regarding the use and operation of Defendant Incase's products in an infringing way. *See, Exhibit 3*, Screenshot from Defendant Incase's Website.

25. Customers and/or resellers of the Infringing Products provide reviews on public forums identifying and discussing their use of the various Infringing Products for various Portable Computer models.

26. When customers and/or resellers follow such instructions, user information, and/or other design information they directly infringe one or more claims of the '809 Patent.

27. Upon information and belief, Defendant Incase knows that by providing such instructions, user information, and/or other design information on its website, customers and/or resellers will follow those instructions, user information, and/or other design information, and directly infringe one or more claims of the '809 Patent.

28. Upon information and belief, Defendant Incase knowingly induced the infringing acts with the specific intent to encourage infringement by customers and/or resellers of the Infringing Products.

29. Defendant Incase continues to cause, urge, aid, advise, and encourage customers and/or resellers to use, market, offer for sale, and/or sell the Infringing Products despite knowledge of the '809 Patent.

30. Defendant Incase indirectly infringes the '809 Patent by contributing to infringement by others, such as customers and/or resellers, in accordance with 35 U.S.C. § 271(c) in this District and elsewhere in the United States.

31. As stated above, direct infringement of at least one claim of the '809 Patent is the result of activities (use, market, offer for sale, and/or sale) performed by the customers and/or resellers of the Infringing Products.

32. Defendant Incase's Portable Computer Cases (such as, the *Book Jacket*, *Magazine Jacket*, and *Maki Jacket* series) allow for the covering of various Portable Computer models (such as, the iPad 2, the iPad 3, the iPad 4, and the iPad mini).

33. When the *Book Jacket*, *Magazine Jacket*, and *Maki Jacket* series are used to cover the iPad 2, the iPad 3, the iPad 4, and/or the iPad mini as claimed in the '809 Patent, the Infringing Products must necessarily cover a Portable Computer model in an infringing manner.

34. The Infringing Products cannot operate, function, and/or be used in an acceptable manner absent the ability to cover a Portable Computer model.

35. A reasonable inference to be drawn from the facts as set forth above is that the ability to cover a Portable Computer model is especially made or especially adapted to operate, function, and/or be used by Defendant Incase's Infringing Products.

36. A reasonable inference to be drawn from the facts as set forth above is that the ability to cover a Portable Computer model is not a staple article or commodity of commerce and that its use is required for the operation and/or function of the Infringing Products. Any other use would be unusual, far-fetched, illusory, impractical, occasional, aberrant, or experimental.

37. Defendant Incase's Infringing Products, with the ability to cover a Portable Computer model, are each a material part of the invention of the '809 Patent and are especially made for the infringing manufacturing, use, offering for sale, and sale of the Infringing Products.

38. Defendant Incase's Infringing Products are especially made or adapted to infringe one or more claims of the '809 Patent.

39. Because the manufacturing, use, offering for sale, and sale of the Infringing Products infringe one or more claims of the '809 Patent, Defendant Incase's sales of its Infringing Products have no substantial non-infringing uses.

40. Accordingly, a reasonable inference is that Defendant Incase offers to sell or sells a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing one or more claims of the '809 Patent, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

VI. JURY DEMAND

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

VII. PRAYER FOR RELIEF

Plaintiff Bovino requests that the Court find in its favor and against Defendant Incase,

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 indirectly infringed by Defendant Incase;
- b. For judgment for a reasonable royalty for said infringement from the date of filing the original Complaint forward;
- c. For pre-judgment and post-judgment interest on the damages caused by Defendant Incase's infringing activities and other conduct complained of herein;
- d. 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;
- e. 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 30th day of September, 2014.

Respectfully Submitted,

FISCHER LAW FIRM, P.C.

/s/ Ronnie Fischer

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CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following email addresses:

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