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8 Counsel for the Plaintiff

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10
11 **UNITED STATES DISTRICT COURT**
12 **DISTRICT OF IDAHO**

13 TEDDER INDUSTRIES, LLC, an Idaho
14 limited liability company, d/b/a ALIEN
15 GEAR and d/b/a OLD FAITHFUL
16 HOLSTERS,

17 Plaintiff,

18 vs.

19 MTC HOLSTERS, LLC, a Missouri
20 foreign limited liability company, d/b/a
21 CROSSBREED HOLSTERS,

22 Defendant.
23

No.

COMPLAINT FOR
DECLARATORY JUDGMENT
OF NON-INFRINGEMENT
AND/OR PATENT INVALIDITY

24
25 The Plaintiff, Tedder Industries, LLC d/b/a Alien Gear and d/b/a Old
26 Faithful Holsters (hereinafter "the Plaintiff" or "Tedder Industries"), by and
27 through its undersigned counsel and for cause of action against the Defendant,
28

COMPLAINT: 1

WITHERSPOON · KELLEY
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1 alleges avers, and states:

2 **I. THE PARTIES**

3 1.1 The Plaintiff is, and at all times material hereto has been, a limited
4 liability company organized under the laws of the State of Idaho.
5

6 1.2 The Plaintiff is a citizen of the State of Idaho for purposes of Federal
7 jurisdiction.
8

9 1.3 On information and belief, the Defendant is, and at all times material
10 hereto has been, a limited liability company organized under the laws of the State
11 of Missouri, with its principal place of business within the State of Missouri.
12

13 1.4 The Defendant is a citizen of the State of Missouri for purposes of
14 Federal jurisdiction.
15

16 1.5 The Defendant claims rights under U.S. Patent No. 8,672,201 (the
17 "201 Patent") and has asserted those rights against the Plaintiff by way of a
18 demand letter sent to the Plaintiff, within the District of Idaho—specifically,
19 Kootenai County, State of Idaho.
20
21

22 1.6 By virtue of its demand letter to the Plaintiff, the Defendant has put
23 its claimed patent rights at issue within the District of Idaho.
24

25 1.7 The Defendant has purposefully availed itself of the benefits and
26 burdens of conducting business within the State of Idaho and the District of
27 Idaho. The Defendant accepts offers products for sale, accepts purchase orders,
28

1 accepts purchase funds, and ships products to the State of Idaho by way of an
2 online retail presence.

3 II. JURISDICTION & VENUE

4
5 2.1 This action arises under the Federal Declaratory Judgments Act, 28
6 U.S.C. §§ 2201 and 2202 and the Patent Laws of the United States, 35 U.S.C. § 1
7
8 *et seq.*

9 2.2 The Court enjoys subject matter jurisdiction over this action pursuant
10 to 28 U.S.C. §§ 1331 and 1338.

11
12 2.3 This Court enjoys personal jurisdiction over the Defendant.

13 2.4 Venue properly lies within the District of Idaho, pursuant 28 U.S.C.
14 §§ 1391 and 1400.

15 III. FACTS

16
17
18 3.1 Tedder Industries reasserts and realleges each and every allegation
19 and averment made above as though fully set forth herein.

20 **A. BOTH OF THE PARTIES TO THIS LITIGATION MARKET AND SELL A** 21 **PRODUCT THAT IS UBIQUITOUSLY AVAILABLE IN THE UNITED STATES'** 22 **HANDGUN HOLSTER INDUSTRY.**

23 3.2 Tedder Industries manufactures and sells holsters for handguns,
24 among other products.

25
26 3.3 Within the handgun holster industry there is a product known as a
27 "hybrid holster." A hybrid holster consists of a rigid gun encasement (generally
28

1 made of a polymer material) that is attached (via rivets, bolts, screws, or other
2 hardware) to a flexible backing plate/sheet (generally made of leather or
3 neoprene). That combination is worn within the user's waistband and is attached
4 to the user's beltline with hooks or clips.
5

6 3.4 The hybrid holster is ubiquitous in the market.
7

8 3.5 Tedder Industries has marketed and sold hybrid holsters under the
9 trade names "Alien Gear" and "Old Faithful." Other than branding the Alien Gear
10 holsters and the Old Faithful holsters are identical.
11

12 3.6 When Tedder Industries first began manufacturing, marketing, and
13 selling hybrid holsters it did so under the "Old Faithful" name. Tedder Industries
14 has substantially transitioned to the "Alien Gear" name. For purposes of this
15 complaint, the hybrid holsters manufactured, marketed, and sold by Tedder
16 Industries will be referred to as the "Alien Gear Holsters."
17
18

19 3.7 A Google search for "hybrid holster" yields similar products
20 marketed and sold by many companies other than the parties to this action. Just
21 within the first two "pages" of results are functionally identical products marketed
22 and sold by: Hidden Hybrid Holsters, FoxX Holsters, Minotaur Hybrid Holsters,
23 Aegis Armory, Blue Ridge Holsters, White Hat Holsters, and Stealth GearUSA.
24
25

26 3.8 Hybrid holsters, just like the ones sold by Tedder Industries and just
27 like the ones sold by the Defendant, are ubiquitous in the United States' handgun
28

1 holster market.

2 3.9 The only difference between the Cross Breed Holster and the
3 panoply of other hybrid holsters that are available in the market is that Cross
4 Breed uses "decorative" belt attachment clips—that is, the Cross Breed Holster
5 comes with clips that are emblazoned with a "cross" design.
6

7
8 3.10 The 201 patent purports to protect the use of decorative belt
9 attachment clips, including those bearing the images of stars, crosses, and other
10 designs.
11

12 3.11 In addition to holsters with these decorative clips, the Defendant
13 markets and sells plain—unadorned—belt attachment clips for hybrid holsters.
14

15 3.12 Tedder Industries has never manufactured, marketed, or sold a
16 holster with decorative belt attachment clips. All of Tedder Industries' products
17 have plain—unadorned—belt attachment clips.
18

19 **B. THE DEFENDANT HAS IMPROPERLY ASSERTED THAT THE ALIEN GEAR**
20 **HOLSTERS INFRINGE UPON THE DEFENDANT'S RIGHTS UNDER THE 201**
21 **PATENT.**

22 3.13 On or about October 9, 2014, the Defendant sent the Plaintiff letters
23 purporting that the Alien Gear Holsters infringe upon Defendant's rights under the
24 201 Patent. The demand letters are attached hereto.
25

26 3.14 The 201 Patent, however, does not protect the underlying utility of
27 the hybrid holster, nor could the 201 Patent protect the underlying utility of the
28

1 hybrid holster.

2 3.15 The Defendant is not the inventor of the hybrid holster, nor is the
3 Defendant the assign of the hybrid's holster inventor.
4

5 3.16 Tedder Industries has not infringed upon the 201 Patent.

6 **IV. FIRST CAUSE OF ACTION:**
7 **DECLARATORY JUDGMENT OF NON-INFRINGEMENT**

8 4.1 Tedder Industries reasserts and realleges each and every allegation
9 and averment made above as though fully set forth herein.
10

11 4.2 The 201 Patent does not protect the underlying utility of hybrid
12 holster.
13

14 4.3 The 201 Patent protects only the use of belt attachment clips that are
15 "decorative in appearance."
16

17 4.4 None of the Plaintiff's activities has infringed upon any of the rights
18 granted by the 201 Patent.
19

20 4.5 There is an actual case of controversy between the parties, by virtue
21 of the Defendant's letters purporting rights under the 201 Patent and alleging that
22 Tedder Industries in infringing upon those rights.
23

24 4.6 Pursuant to 28 U.S.C. §§ 2201 and 2202, Tedder Industries is
25 entitled to a declaratory judgment holding:
26

27 4.6.1 That the 201 Patent does not protect the underlying utility of a
28 hybrid holster;

1 4.6.2 That none of Tedder Industries' business activities infringe
2 upon the 201 Patent; and

3 4.6.3 That Tedder Industries is not otherwise liable for patent or
4 other intellectual property infringement.
5

6 4.7 Absent a timely declaration of the parties' respective rights and
7 obligations, with respect to the 201 Patent, Tedder Industries' business will suffer
8 substantial damage and harm.
9

10 **V. SECOND CAUSE OF ACTION:**
11 **DECLARATORY JUDGMENT OF PATENT INVALIDITY**

12 5.1 Tedder Industries reasserts and realleges each and every allegation
13 and averment made above as though fully set forth herein.
14

15 5.2 The 201 Patent is invalid for failing to comply with the conditions
16 and requirements for patentability, including but not limited to those stated in
17 §§ 101, 102, 103, 112, and/or 171 of the United States Patent Laws, Title 35
18 U.S.C. and the rules, regulations, and other provisions pertaining thereto.
19

20 **A. THE 201 PATENT IS INVALID FOR OBVIOUSNESS.**
21

22 5.3 Insofar as the Defendant asserts that the 201 Patent protects the
23 underlying utility of a hybrid holster, the patent is invalid for obviousness.
24

25 5.4 Claims 1-14 of the 201 Patent are not more than predictable uses
26 and/or combinations of prior art elements embodied by prior United States
27 patents, including but not limited to U.S. Patent Nos. 1,887,780 A (filed July 22,
28

1 1930); 4,718,585 A (filed October 15, 1986); 5,103,884 (filed February 2, 1990);
2 6,092,703 A (filed November 5, 1998); and 6,641,009 B2 (filed June 19, 2002).

3
4 5.5 This use of prior art according to established functions is
5 significantly obvious and invalidates the 201 Patent, insofar as it purports to
6 protect the hybrid holster's underlying utility.

7
8 5.6 There is an actual case of controversy between the parties, by virtue
9 of the Defendant's letters purporting rights under the 201 Patent and alleging that
10 Tedder Industries in infringing upon those rights.

11
12 5.7 Pursuant to 28 U.S.C. §§ 2201 and 2202, Tedder Industries is
13 entitled to a declaratory judgment holding that the 201 patent is invalid.

14
15 5.8 Absent a timely declaration of the 201 patent's invalidity, Tedder
16 Industries' business will suffer substantial damage and harm.

17
18 **B. THE 201 PATENT IS INVALID BECAUSE OF PRIOR PUBLIC USE.**

19 5.9 Prior public use of hybrid holster renders the 201 Patent invalid,
20 insofar as the Defendant purports the patent to protect such utility.

21
22 5.10 Each of the claims made in the 201 Patent (whether jointly or
23 individually) was known by others, used by others, was for sale in the United
24 States, was patented, and/or was described in printed publications in this country
25 more than one year prior to the Defendant's filing application for the 201 Patent.
26

27
28 5.11 The Defendant advertised, marketed, and offered for sale holsters

1 that embodied the 201 Patent's claims more than one year prior to the Defendant's
2 filing application for the 201 Patent.

3 5.12 This prior public use invalidates the 201 Patent.
4

5 5.13 Pursuant to 28 U.S.C. §§ 2201 and 2202, Tedder Industries is
6 entitled to a declaratory judgment holding that the 201 patent is invalid.
7

8 5.14 Absent a timely declaration of the 201 patent's invalidity, Tedder
9 Industries' business will suffer substantial damage and harm.

10 **C. EVEN LIMITED TO DECORATIVE CLIPS, THE 201 PATENT IS INVALID.**
11

12 5.15 The 201 Patent was filed as a utility patent.

13 5.16 Upon information and belief, the Defendant does not hold any design
14 patent rights relative to the Cross Breed Holster.
15

16 5.17 Even insofar as the Defendant purports it to protect only the use of
17 decorative clips, the 201 Patent is invalid due to said clips being mere ornamental
18 designs, which can be protected only via a design patent.
19

20 5.18 In addition, the 201 Patent cannot protect decorative belt attachment
21 clips because such clips are anticipated by and/or are combinations of prior
22 United States patents, including but not limited to: U.S. Patent Nos. 7,254,872 B2
23 (filed June 16, 2005) and 4,502,188 A (filed March 5, 1985).
24
25

26 5.19 The Defendant's use of decorative belt attachment clips is merely a
27 predictable use of prior art elements according to their established functions; the
28

1 Defendant's use is, therefore, significantly obvious.

2 5.20 Pursuant to 28 U.S.C. §§ 2201 and 2202, Tedder Industries is
3 entitled to a declaratory judgment holding that the 201 patent is invalid.
4

5 5.21 Absent a timely declaration of the 201 patent's invalidity, Tedder
6 Industries' business will suffer substantial damage and harm.
7

8 VI. PRAYER FOR RELIEF

9 WHEREFORE, the Plaintiff prays for relief as follows:

10 6.1 Declaring that Tedder Industries does not infringe any valid claims
11 of the 201 Patent and that Tedder Industries is not liable for infringement;
12

13 6.2 Declaring that the 201 Patent and each claim thereof is invalid;
14

15 6.3 Awarding to Tedder Industries its reasonable attorneys' fees,
16 expenses, and costs incurred in this action, pursuant to 35 U.S.C. § 285 and/or
17 other established law; and
18

19 6.4 For such other relief as the Court deems just and equitable under the
20 premises.
21

22 RESPECTFULLY SUBMITTED, this 27th day of October, 2014.

23 **WITHERSPOON • KELLEY**

24 */s/ Christopher G. Varallo*

25
26

CHRISTOPHER G. VARALLO, ISB No. 6135
27 Counsel for the Plaintiff
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