

FILED

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

2014 NOV 14 A 11:57

CLERK US DISTRICT COURT  
ALEXANDRIA, VIRGINIA

BEARD HEAD, INC.,  
Plaintiff

v.

STAT LTD. dba Beardo,  
JEFFERY BRIAN PHILLIPS,  
Defendants.

Civil Action No. 2:14CV588  
RGD/LRL

COMPLAINT FOR DECLARATORY RELIEF FOR PATENT  
NON-INFRINGEMENT AND INVALIDITY

Plaintiff, Beard Head Corporation, for its complaint for declaratory relief of patent non-infringement and invalidity against defendants STAT Ltd. dba Beardo, and Jeffrey Brian Phillips, alleges as follows:

**THE PARTIES**

1. Plaintiff Beard Head Corporation (BEARD HEAD) is a corporation organized under the laws of the State of California having its headquarters and principal place of business at 645 West 9<sup>th</sup> Street, #613, Los Angeles, CA 90015.
2. Upon information and belief, defendant STAT Ltd. dba Beardo (STAT) is a Limited Company incorporated in the Turks and Caicos Islands, and principal place of business at 139 Grand River Street North Box 3, Paris, Ontario Canada N3L1K0.
3. Upon information and belief, defendant Jeffrey Brian Phillips is the owner of defendant STAT Ltd. and resides at 17 Ball Street, Paris, Ontario Canada N3L1G5.

### **JURISDICTION AND VENUE**

4. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 over the subject matter of this Complaint for Declaratory Judgment as provided by 28 U.S.C. §§ 2201 and 2202.
5. Venue properly exists in this judicial district pursuant to 28 U.S.C. § 1391 and § 1400.
6. This Court has personal jurisdiction over the defendants pursuant to Va. Rev. Stat. Ann. § 8.01-328.1 and FRCP Rule 4 directing federal district courts to follow the law on personal jurisdiction in the state where the federal court is located, because, on information and belief, defendants transact business in Virginia and solicit business in this judicial district. Furthermore, defendants have alleged in Civil Action 3:13-cv-00762 that Beard Head's activities that are conducted within this judicial district constitute patent infringement.

### **FACTUAL ALLEGATIONS**

7. Since 2007, Beard Head Corporation has been in the business of manufacturing and selling quality novelty headwear that combines a knitted winter hat with a knitted beard feature.
8. Beard Head's headwear products include beard caps having many variations, including close-fitting caps, extended caps covering ears, neck and forehead, caps having ornaments such as horns, poms, fringe, tassels, etc., caps having brims, cuffs, edge-rolls, cabled and ribbed textured yarns, caps with branding spaces, and caps with various team colors. Beard Head's headwear products include bearded caps having many variations of beards, including close-fitting cropped beards, medium length beards, long length beards, unitary cap and beard products, beards having a separate moustache and beard, and beards having ornaments such as tassels, fringe, braiding, textures, etc.
9. Beard Head is the first and the largest seller of bearded caps and sells in the United States and around the world.
10. Upon information and belief, Jeffrey Brian Phillips is the named inventor of U.S. Design Patent D682186 entitled "Combined Ski Face Mask and Hat" filed Aug. 9, 2011 as application 29/399,030, granted Oct. 22, 2013 (the '186 patent).

11. Upon information and belief, the '186 patent claims the ornamental design for a combined ski face mask and hat, as shown and described in Figures 1, 2, and 3 of the design patent, EXHIBIT A.

12. Upon information and belief, STAT Inc. of Stratford, Ontario is the listed assignee of the '186 patent. EXHIBIT B.

13. On Nov. 13, 2013, STAT dba Beardo and Jeffrey Brian Phillips filed a patent infringement lawsuit against plaintiff BEARD HEAD in the Alexandria Division of the Eastern District of Virginia, civil action 3:13-cv-00762, removed to the Richmond Division. EXHIBIT C.

14. On Sept. 8, 2014 STAT filed a Motion to Voluntarily Dismiss the patent count 1, without prejudice, which was granted by Judge Hudson on Sept. 9, 2014. EXHIBIT D.

15. BEARD HEAD and STAT remain in litigation against each other and the patent claim may be raised against plaintiffs at any time, creating an actual and substantial controversy between BEARD HEAD and STAT with respect to the '186 patent.

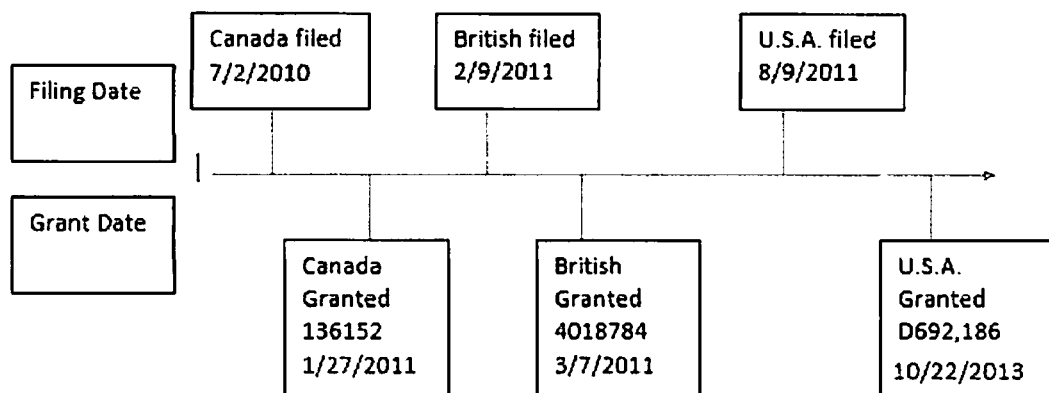
16. BEARD HEAD has not infringed and does not infringe any valid claim of the '186 patent.

17. BEARD HEAD is entitled to a judicial declaration and order that BEARD HEAD has not infringed and does not infringe, either literally or under the doctrine of equivalents, any valid claim of the '186 patent, and that the '186 patent is invalid.

**STAT '186 Invalidity due to Statutory Bar 102(d)**

18. STAT/Phillips both filed for, and received, a Canadian Patent to the same invention before the U.S. application was ever filed, in violation of 35 U.S.C. § 102(d). EXHIBIT E.

## Phillips Design Patent Application Filing &amp; Grant Timeline



19. Upon information and belief, the '186 patent is statutorily barred by 35 U.S.C. § 102(d), should not have been granted, and is invalid and unenforceable on its face since the related Canadian patent issued before the filing of the application leading to '186 patent.

20. For a patent application to be barred pursuant to the pre-AIA 35 U.S.C. § 102(d), there are four requirements as explained in the USPTO's Manual of Patent Examining Procedure (incorporated herein where referenced) (MPEP) 2135.01:

1. The foreign application must be filed more than 12 months before the effective U.S. filing date (modified to six months by 35 U.S.C. § 172).
2. The foreign applications must be filed by the same applicant.
3. The foreign patent must be granted before the filing date of the U.S. Application.
4. The same invention must be involved. [Exhibit F].

21. Referring to 102(d) Requirement 1, STAT's foreign patent, Canada 136152, issued from a Canadian application for patent filed more than six months before the filing of the application in the U.S.. STAT's Canada filing date of Jul. 2, 2010 is more than 6 months before STAT's actual U.S. filing date of Aug. 9, 2011.

22. Referring to 102(d) Requirement 2, each of the STAT applications for the U.S. Patent, and the Canadian Patent disclose the same inventor, Jeffrey Phillips.

23. Referring to 102(d) Requirement 3, STAT's invention was first patented by the applicant in a foreign country as Canadian patent 136152 prior to the date of the application for patent in the U.S.. STAT's Canada grant date of Jan. 27, 2011 is before STAT's actual U.S. filing date of Aug. 9, 2011.

24. Referring to 102(d) Requirement 4, each of the STAT applications for the U.S. Patent, and the Canadian Patent are directed to the same invention.

25. 35 U.S.C. § 102(d) is a statutory bar, therefore STAT cannot establish an earlier date of invention to overcome the effect of Canada 136152 under § 102(d). See *In re Kathawala*, 9 F.3d 942, at 946 (Fed. Cir. 1993).

#### **STAT '186 Unenforceability due to False Statement – Foreign Filing**

26. 18 U.S.C. §1001 states that “Whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully— (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in §2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or §1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

27. Jeffrey Phillips signed an inventor's declaration in support of U.S. design application 29/399,030, which application was later granted as U.S. D692186. [Exhibit G].

28. The Phillips declaration declares under penalty of 18 U.S.C. §1001 “that I do not know and do not believe that the same invention was first patented or made the subject of an inventor's certificate that issued in any country foreign to the United States of America before the filing date of this United States application if the foreign application was filed

by me, or by my legal representatives or assigns, more than twelve months (six months in the case of design patents) prior to the filing date of this United States application.” (Emphasis added).

29. The Phillips declaration further declares “ that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.”

30. A patent is unenforceable if it is shown by clear and convincing evidence that the inventor procured the patent by intentional deception of the patent examiner. *Therasense, Inc. v. Becton Dickenson & Co.* 649 F3d 1276 (Fed. Cir. May 25, 2011). Inequitable conduct must be material and intentional.

31. Signing of a false affidavit is evidence of materiality. *Rohm & Haas Co. v. Crystal Chem. Co.*, 722 F2d 1556 (Fed. Cir. 1983).

32. Upon information and belief, STAT was aware of their own U.S. patent filing Aug. 9, 2011 and nonetheless attempted to make a false claim to priority to the Canadian application filed July 2, 2010 outside the mandatory 6-month window.

33. A priority claim to an earlier foreign application must satisfy 35 U.S.C. § 119 and 37 C.F.R. §§ 1.55 and 1.63. 35 U.S.C. § 119(a) states: “An application for patent for an invention filed in this country by any person who has . . . previously regularly filed an application for a patent for the same invention in a foreign country which affords similar privileges in the case of applications filed in the United States or to citizens of the United States, or in a WTO member country, shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed.” For design patents, 35 U.S.C. § 172 modifies the twelve month time limit imposed by 35 U.S.C. § 119, limiting such period to six months: “The right of priority provided for

by subsections (a) through (d) of section 119 of this title and the time specified in section 102(d) **shall be six months in the case of designs**. “ [Emphasis added].

34. U.S. applicants for patent and anyone associated with the application have an affirmative duty of candor and good faith, which includes a duty to disclose any and all information material to patentability. 37 C.F.R. 1.56.

35. Applicants have a duty to bring to the attention of the Office any material prior art or other information cited or brought to their attention in any related foreign application. MPEP 2001.06.

36. Upon information and belief, STAT did not notify the USPTO or the Examiner that the Canadian application had matured Jan. 27, 2011 into a registered Canadian patent 136152, even though this was more than 6 months before the U.S. filing date of Aug. 9, 2011. The file history of the U.S. patent shows that there was not even a single Information Disclosure Statement (IDS) filed, which is the mechanism by which the duty owed to the USPTO is discharged. [EXHIBIT H].

37. Upon information and belief, STAT’s failure to notify the USPTO of the Canadian patent avoided the consequences of the application for patent being denied as statutorily barred and rejected under 35 U.S.C. §102(d).

38. Upon information and belief, STAT’s failure satisfies the “but for” materiality required by *Therasense* – the patent would not have been granted “but for” the inventor’s deception.

39. Upon information and belief, STAT’s Intent is shown by the affirmative signing of the inventor’s declaration on Aug. 30, 2013 whereby the inventor promises not to do exactly what the inventor did, namely withhold evidence of unpatentability. Intent may be inferred where a patent applicant knew or should have known that withheld information would be material to the PTO’s consideration of the patent application. *Critikon Inc. v. Becton Dickenson Vascular Access Inc.*, 43 U.S.P.Q.2d 1666, 1668 (Fed. Cir. 1997).

40. A holding of inequitable conduct renders all claims of the patent unenforceable. *Kingsdown Med. Consultants Ltd v. Hollister, Inc.* 863 F.2d 867 (Fed. Cir. 1988).

Inequitable conduct is an equitable defense to patent infringement, and is therefore for the court to decide, not the jury. *Kingsdown* at 876.

41. Upon information and belief, because of STAT/Phillip's false statement, the patent is required to be held as unenforceable.

**STAT '186 Invalidity due to Statutory Bar Admission  
in STAT's Trademark Filing**

42. Upon information and belief, STAT's patent is invalid due to Statutory Bars under 35 U.S.C. § 102.

43. 35 U.S.C. § 102(a), and 102(b) entitled "Novelty; Prior Art" states that: "A person shall be entitled to a patent unless—(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent, or (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of the application for patent in the United States."

44. 35 U.S.C. § 102, Novelty, defines eight statutory bars to patentability. The eight statutory bars can be interpreted as whether the claimed invention was:

*BEFORE THE DATE OF INVENTION*

- (1) Known by someone other than the inventor, in the United States, §102(a);
- (2) Used by someone other than the inventor, in the United States, §102(a);
- (3) Patented by someone other than the inventor, anywhere in the world, §102(a);
- (4) Published by someone other than the inventor, anywhere in the world, §102(a);

or was



*MORE THAN A YEAR BEFORE THE EFFECTIVE FILING DATE OF U.S. APPLICATION*

- (5) Patented by the inventor or anyone else, anywhere in the world, §102(b);
- (6) Published by the inventor or anyone else, anywhere in the world, §102(b);
- (7) Used by the inventor or anyone else, in the United States, § 102(b); or
- (8) Sold by the inventor or anyone else, in the United States, §102(b).

45. The Invention was published in STAT's own trademark application and constitutes a §102(a) and (b) Statutory Bar against STAT's patent application. In U.S. Trademark Application Serial Number 85/392,844, STAT submitted a photographic image of a bearded hat as a trademark specimen. The photographic image of a bearded hat submitted in STAT's trademark application is the same as or substantially the same as the invention claimed in D692186. EXHIBIT I.

46. STAT filed a Sworn Statement of Use in Commerce to support Stat's Trademark Application Serial Number 85/392,844, now Trademark Registration 4,128,503. EXHIBIT J.

47. STAT alleged a date of first use in commerce "at least as early as Apr. 1, 2010". EXHIBIT K.

48. The use or sale of the invention "at least as early as Apr. 1, 2010" is more than a year before the actual U.S. filing date of Aug. 9, 2011 for the STAT patent application.

49. STAT's U.S. Trademark Application Serial Number 85/392,844 was filed by "Phillips, Jeffrey B." EXHIBIT L.

50. STAT's U.S. Trademark Application Serial Number 85/392,844 lists "Daniel S. Ward" as the domestic representative. EXHIBIT M.

51. STAT's Publication, or Use, or Sale, or Offer for Sale as submitted as evidence in STAT's trademark application is an admission that the invention was published before the date of invention, or used, sold, or offered for sale more than a year before the U.S. filing date of Aug. 9, 2011.

52. Because 35 U.S.C. § 102(a) and 35 U.S.C. § 102(b) are both statutory bars to patentability, STAT cannot establish an earlier date of invention to overcome the effect of STAT's Publication, or Use, or Sale, or Offer for Sale under §102(a) and §102(b).

**STAT '186 Invalidity due to Tara Duff Prior Art Provided by STAT**

53. STAT provided in co-pending civil lawsuit 3:13-cv-00762 a document entitled "Tara Duff's internet blog" dated Dec. 27, 2009 (1 year and 8 months before their U.S. filing date), which shows multiple photographic images of bearded hats for sale by third party Ms. Tara Duff, and which is in effect an admission and acknowledgement of the unpatentability and unenforceability of D692186. STAT Discovery Document 000219 in Civil Action 3:13-cv-00762. Exhibit N.

54. The photographic images of bearded hats on Tara Duff's internet blog publication dated Dec. 27, 2009 are the same as or substantially the same as the invention claimed in D692186.

55. Dec. 27, 2009 is more than a year before the filing date of Aug. 9, 2011.

56. In violation of 35 U.S.C. §102(a) and (b), Tara Duff's Publication, or Use, or Sale, or Offer for Sale constitutes invalidating prior art and shows that the invention was published before the date of invention, or used, sold, or offered for sale more than a year before the U.S. filing date of Aug. 9, 2011.

57. Because 35 U.S.C. § 102(a) and 35 U.S.C. § 102(b) are both statutory bars to patentability, STAT cannot establish an earlier date of invention to overcome the effect of Tara Duff's Publication, or Use, or Sale, or Offer for Sale under Section 102(a) and 102(b).

### **STAT '186 Unenforceability due to Fraud & False Statement**

58. A patent is unenforceable if it is shown by clear and convincing evidence that the inventor procured the patent by intentional deception of the patent examiner. *Therasense, Inc. v. Becton Dickenson & Co.* 649 F3d 1276 (Fed. Cir. May 25, 2011). Inequitable conduct must be material and intentional.

59. U.S. applicants for patent, and anyone associated with the application, have an affirmative duty of candor and good faith, which includes a duty to disclose any and all information material to patentability. 37 C.F.R. 1.56.

60. Upon information and belief, STAT, Phillips, and/or Attorney Daniel Ward was aware of STAT's own U.S. trademark filing and submitted a Statement of Use admitting to the sale of the invention more than a year before application for patent. EXHIBIT K.

61. Upon information and belief, STAT and/or Phillips was aware of sales of prior art products such as Tara Duff et al. EXHIBIT M, and STAT's own sales in 2009. EXHIBIT Q.

62. Upon information and belief, STAT did not notify the USPTO or the Examiner about either the trademark submission, the Tara Duff sales, or STAT's sales. EXHIBIT N.

63. Upon information and belief, STAT's failure to notify the USPTO of the trademark submission, the Tara Duff sales, or STAT's own sales, avoided the consequences of the application for patent being denied as statutorily barred and rejected under 35 U.S.C. §102.

64. Upon information and belief, STAT's failure satisfies the "but for" materiality required by *Therasense* – the patent would not have been granted "but for" the inventor's deception.

65. Upon information and belief, STAT's Intent is shown by the affirmative signing of an inventor's declaration on Aug. 30, 2013 whereby the inventor promises not to do exactly what the inventor did, namely withhold evidence of unpatentability. Intent may be inferred where a patent applicant knew or should have known that withheld information would be material to the PTO's consideration of the patent application. *Critikon Inc. v. Becton Dickenson Vascular Access Inc.*, 43 U.S.P.Q.2d 1666, 1668 (Fed. Cir. 1997).

66. A holding of inequitable conduct renders all claims of the patent unenforceable. *Kingsdown Med. Consultants Ltd v. Hollister, Inc.* 863 F2d 867 (Fed. Cir. 1988).

67. Upon information and belief, because of STAT/Phillip's fraud on the patent office and false statement, the patent is required to be held as unenforceable.

**STAT '186 Invalidity due to Additional Tara Duff Prior Art from 2010  
as §102(a) and (b) Statutory Bar**

68. Tara Duff's internet blog publications dated Jan. 5, 2010 (BH 000600), Jan. 7, 2010 (BH 000601), Jan. 15, 2010 (BH 000602), Feb. 5, 2010 (BH 000603), Feb. 22, 2010 (BH 000604), and Mar. 15, 2010 (BH 000605), show multiple photographic images of bearded hats. Beard Head Discovery Documents BH 000600-000605. EXHIBIT O.

69. The photographic images of bearded hats on Tara Duff's internet blog publication are the same as or substantially the same as the invention claimed in D692,186.

70. Publication dates for Jan. 5, 2010 (BH 000600), Jan. 7, 2010 (BH 000601), Jan. 15, 2010 (BH 000602), Feb. 5, 2010 (BH 000603), Feb. 22, 2010 (BH 000604), and Mar. 15, 2010 (BH 000605) are all more than a year before the filing date of Aug. 9, 2011.

71. Tara Duff's Publication, or Use, or Sale, or Offer for Sale constitutes invalidating prior art and shows that the invention was published before the date of invention, or used, sold, or offered for sale more than a year before the U.S. filing date of Aug. 9, 2011.

72. Because 35 U.S.C. § 102(a) and 35 U.S.C. § 102(b) are both statutory bars to patentability, STAT cannot establish an earlier date of invention to overcome the effect of Tara Duff's Publication, or Use, or Sale, or Offer for Sale under Section 102(a) and 102(b).

**The STAT U.S. Design Patent is Obvious under 35 U.S.C. 103**

73. Regarding patentability of an invention, 35 U.S.C. 103 entitled “Obviousness” states that: “A patent may not be obtained through the invention is not identically disclosed or described as set forth in Section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.”

74. To establish *prima facie* obviousness, all the claim limitations must be taught or suggested by the prior art. In determining *prima facie* obviousness, the proper standard is whether the design would have been obvious to a designer of ordinary skill with the claimed type of article. *In re Nalbandian*, 661 F.2d 1214, 211 USPQ 782 (CCPA 1981) and MPEP 1504.03.

75. As a whole, a design must be compared with something in existence, and not something brought into existence by selecting and combining features from prior art references. *In re Jemmings*, 182 F.2d 207, 86 USPQ 68 (CCPA 1950) and MPEP 1504.03. The “something in existence” referred to in *Jemmings* has been defined as “...a reference... the design characteristics of which are basically the same as the claimed design...” *In re Rosen*, 673 F.2d 388, 391, 213 USPQ 347, 350 (CCPA 1982) and MPEP 1504.03. (the primary reference did “...not give the same visual impression...” as the design claimed but had a “...different overall appearance and aesthetic appeal...”)

76. Upon information and belief, STAT’s U.S. D692,186 Patent is obvious in view of STAT’s own Canadian Patent 136152 since STAT’s effective U.S. filing date is Aug. 9, 2011, but STAT’s Canadian patent 136152 was registered as a patent Jan. 27, 2011 before their U.S. filing date.

77. Upon information and belief, STAT’s U.S. D692,186 Patent is obvious in view of STAT’s British patent 4018784, since the British patent was registered as a patent Mar. 7, 2011 before STAT’s U.S. filing date of Aug. 9, 2011. EXHIBIT P.

**The STAT U.S. Design Patent is Invalid for Functionality**

78. The design patent statute restricts design patents to ornamental designs, and cannot include functional elements within the scope of protection. *L.A. Gear v. Thom McAn Shoe Co.* 988 F.2d 1117 (Fed. Cir 1993) and cases discussed therein.

79. STAT’s design of a detachable beard face mask on a ski hat represents the sine qua non of a functionality problem. It has been shown, per the many pieces of prior art listed herein above, that bearded masks were known over a year prior to the effective filing date of Plaintiff’s Design Patent. Since the sole remaining feature is detachability, which is a purely functional feature, the design itself is not entitled to protection under a design patent.

**BEARD HEAD’s Noninfringement of D692186**

80. Upon information and belief, BEARD HEAD products do not infringe any valid claim of D692186.









81. Upon information and belief, STAT U.S. Design D692186 Figures 1, 2 and 3 require the following design features:

<p><u>CAP</u>                  C1: Close fitting style                  C2: Shape covers ears, partial forehead, partial nape                  C3: No ornaments, e.g. horns, poms, fringe, tassels, etc.                  C4: No brim and no cuff or edge roll                  C5: No texture, e.g. cables, ribbing                  C6: No banner-space on forehead                  C7: No color banding/stripes</p>	<p><u>BEARD MASK</u>                  M1: Short, cropped                  M2: Unitary piece, e.g. no attached mustache, etc.                  M3: Attached to Cap, outside of mask to inside of cap                  M4: Unobstructed mouth aperture                  M5: No ornaments, e.g. fringe, tassels, etc.                  M6: Mustache double-peak design</p>
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82. Upon information and belief, BEARD HEAD’s products, when compared to the ‘186 Figures 1, 2, and 3, have the following non-infringing features, according to the following Tables and accompanying legend of distinguishing features:








Legend – Non infringement, by feature








<p><b>BEARD HEAD</b>  <b>CAP distinguishing features</b>                  C1: Not Close fitting style                  C2: Not Same Shape covers more or less than ears, partial forehead, partial nape                  C3: Requires ornaments, e.g. horns, poms, fringe, tassels, etc.                  C4: Requires brim, cuff or edge roll                  C5: Requires texture, e.g. cables, ribbing                  C6: Requires banner/logo on forehead                  C7: Requires bands/stripes of color</p>	<p><b>BEARD HEAD</b>  <b>BEARD/MASK distinguishing features</b>                  M1: Not Short, cropped                  M2: Not a Unitary piece, e.g. attached mustache, etc.                  M3: Not Attached to inside of cap                  M4: Obstructed mouth aperture                  M5: Requires ornaments, e.g. fringe, tassels, etc.                  M6: Not a double-peak mustache</p>
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BEARD HEAD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-001 Denied	C3 C5 C7 M2 M6	<p>FIG. 1 Front exploded perspective view of a combined ski face mask and hat in a detached position.</p> 	 <p>Kid-Groom Head \$25.00 petals</p>
BH-002 Denied	M1 M4 M5 M6	<p>FIG. 2 Left side perspective view</p>  <p>FIG. 3 Front perspective view</p> 	 <p>Duke Dynasty-Phil \$35.00 \$44.00 petals</p>
BH-003 Denied	C4 C7 M1 M4 M5 M6		 <p>Biggie-Arkansas (B) \$40.00 petals</p>
BH-004 Denied	M1 M5 M6		 <p>Bushy - Standard Two \$30.00 petals</p>











BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-005 Denied	C5 C7 M2 M6	 <p>Front and three-quarter view of a beardhead (40) face mask and hat in a detached position.</p>	 <p>Kid Snuggler \$25.00 Details</p>
BH-006 Denied	M1 M4 M5 M6	 <p>The Beard Full side perspective view</p>	 <p>Duck Dynasty-Jesse \$38.00 \$48.00 Details</p>
BH-007 Denied	C3 C4 C6, C7 M1 M4 M5 M6	 <p>The Beard Front perspective view</p>	 <p>Barbarian - Rinzler \$45.00 \$60.00 Details</p>
BH-008 Denied	C5 C7 M1 M4 M5 M6		 <p>Billgate-Washington 2 (B) \$40.00 Details</p>

BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-009 Denied	C1 C2 C4 C7 M1 M2 M4		 <p>Clessio - Trooper</p> <p>\$40.00</p> <p>Petals</p>
BH-010 Denied	C6 M1 M4 M5		 <p>Duck Dynasty-Willie Camp</p> <p>\$32.00 \$40.00</p> <p>Petals</p>
BH-011 Denied	C2 C3 C4 C6, C7 M1 M4 M5		 <p>Barbarian - Warrior</p> <p>\$50.00</p> <p>Petals</p>
BH-012 Denied	C7 M1 M2 M4		 <p>Bilipete-Washington 2 (C)</p> <p>\$30.00</p> <p>Petals</p>

BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-013 Denied	C1 C2 C4 M1 M4 M5	 <p>FIG. 1 Front isometric perspective view of a combined ski face mask and hat with a detached portion.</p>	 <p>Duck Dynasty-B1 \$36.00 <del>\$48.00</del> POLARIS</p>
BH-014 Denied	C7 M1 M2 M4	 <p>FIG. 2 The Beard Left side perspective view.</p>	 <p>Billgate-Arkansas (C) \$30.00 POLARIS</p>
BH-015 Denied	C7 M1 M4 M5 M6	 <p>FIG. 3 The Beard Front perspective view.</p>	 <p>Bushy - Duke \$30.00 POLARIS</p>
BH-016 Denied	C7 M1 M4 M5 M6		 <p>Billgate-Washington 1 (B) \$40.00 POLARIS</p>






BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-017 Denied	C7 M1 M2 M4	 <p>FIG. 1 Front-right perspective view of a combined ski face mask and hat in a detached position.</p>	 <p>Belgate-Washington 1 (D) \$38.00 BELGAS</p>
BH-018 Denied	C4 M2 – mustache M6	 <p>FIG. 2 100 Percent Left side perspective view.</p>	 <p>Stubble - Wyatt \$20.00 BELGAS</p>
BH-019 Denied	C6 M1 M4 M5	 <p>FIG. 3 100 Percent Front perspective view.</p>	 <p>Quak Dynasty-Willie \$32.00 BELGAS</p>
BH-020 Denied	C7 M1 M4 M5 M6		 <p>Belgate-New York 2 (E) \$40.00 BELGAS</p>

BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-021 Denied	C7 M1 M2 M4 M6	<p>FIG. 1 Front exploded perspective view of a combined ski face mask and hat in a detached position</p> 	 <p>Bilgate-Oregon 2 (C) \$39.99 Petals</p>
BH-022 Denied	C1 C2 C4 C7 M6	<p>FIG. 2 Top Front Left side perspective view</p> 	 <p>Duck Dynasty-Stubble Cap \$29.99 \$39.99 Petals</p>
BH-023 Denied	C6 M1 M4 M5	<p>FIG. 3 Top Front Front perspective view</p> 	 <p>Jonny Hendriks "Bigg" \$39.99 \$49.99 Petals</p>
BH-024 Denied	C7 M1 M4 M5 M6		 <p>Bilgate-California (B) \$49.99 Petals</p>








BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-025 Denied	C7 M1 M2 M4	<p>Front exploded perspective view of a combined ski face mask and hat in a detailed position</p>  <p>FIG. 1</p>	 <p>Bilgate-New Orleans (C) \$30.00 PELARS</p>
BH-026 Denied	C6 C7 M5 – texture M6	<p>FIG. 2: Side perspective view of the ski face mask and hat.</p>  <p>FIG. 2</p>	 <p>Duck Dynasty-Stubble \$25.00 <del>\$30.00</del> PELARS</p>
BH-027 Denied	C1 C2 C3 C4, C7 M1 M4 M5	<p>FIG. 3: Front perspective view of the ski face mask and hat.</p>  <p>FIG. 3</p>	 <p>Barbarian - Trooper \$45.00 PELARS</p>
BH-028 Denied	C7 M1 M4 M5 M6		 <p>Bilgate-Washington (E) \$40.00 PELARS</p>

















BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-029 Denied	C7 M1 M4 M5 M6	 <p>FIG. 1 Front exploded perspective view of a combined ski face mask and hat in a detached position.</p>	 <p>Brigade-New Orleans (B) \$40.00 PETALS</p>
BH-030 Denied	C6 M5 – texture M6	 <p>FIG. 2 The Patent Left side perspective view.</p>	 <p>Duok Dynasty-Stubble \$29.00 <del>49.00</del> PETALS</p>
BH-031 Denied	C7 M1 M2 M4	 <p>FIG. 3 The Patent Front perspective view.</p>	 <p>Brigade-New York 2 (C) \$30.00 PETALS</p>
BH-032 Denied	C7 M1 M4 M5 M6		 <p>Brigade-San Francisco (E) \$40.00 PETALS</p>









BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-033 Denied	C7 M1 M4 M5 M6		   
BH-034 Denied	C7 M1 M2 M4		
BH-035 Denied	M1 M2 M4		
BH-036 Denied	C7 M5 – texture M6		


















BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-037 Denied	C7 M1 M2 M4	<p>FIG. 1 Front exploded perspective view of a combined ski mask and hat in a detached position</p> 	 <p>Tallgate-Berks 2 (C) \$30.00 petals</p>
BH-038 Denied	C7 M1 M4 M5 M6	<p>FIG. 2 The Front Left side perspective view</p> 	 <p>Tallgate-Indianapolis (B) \$40.00 petals</p>
BH-039 Denied	C4 M1 M2 M3 M4	<p>FIG. 3 The Front Front perspective view</p> 	 <p>Classico Beard Head \$28.00 petals</p>
BH-040 Denied	C4 M6		 <p>Etouille - Rider \$28.00 petals</p>

BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-041 Denied	C7 M1 M2 M4	<p>FIG. 1 Front exploded perspective view of a combined ski face mask and hat in a detached position.</p> 	 <p>Beige-Kansas City (C) \$39.99 DETAILS</p>
BH-042 Denied	C7 M1 M2 M4	<p>FIG. 2 The Face Left side perspective view.</p> 	 <p>Yellow-Oregon 1 (C) \$39.99 DETAILS</p>
BH-043 Denied	C3 C7 M1 M2 M4	<p>FIG. 3 The Face Front perspective view.</p> 	 <p>Santa Beard Head \$35.99 DETAILS</p>
BH-044 Denied	C7 M1 M2 M4		 <p>Beans - Red \$39.99 DETAILS</p>

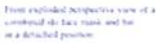









BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-045 Denied	C7 M1 M4 M5 M6	<p>FIG. 1 Front exploded perspective view of a combined ski face mask and hat in a detached position</p> 	 <p>Delicate-Memphis City (B) \$40.00 Details</p>
BH-046 Denied	C7 M1 M4 M5 M6	<p>FIG. 2 Left side perspective view</p> 	 <p>Delicate-Boise (B) \$40.00 Details</p>
BH-047 Denied	C3 M1 M2 M4	<p>FIG. 3 Front perspective view</p> 	 <p>Devil Beard Head \$33.00 Details</p>
BH-048 Denied	C7 M1 M2 M4		 <p>Beans - Looker \$28.00 Details</p>

BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-049 Denied	C7 M1 M2 M4		
BH-050 Denied	C7 M1 M2 M4		
BH-051 Denied	C3 C7 M1 M4 M5 M6		
BH-052 Denied	C7 M1 M4 M5 M6		

BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-053 Denied	M1 M2 M4	<p>Front exploded perspective view of a combined ski face mask and hat in a detached position.</p>  <p>FIG. 1</p>	 <p>Beans - Standard</p> <p>\$28.00</p> <p>Details</p>
BH-054 Denied	C7 M1 M2 M4	<p>FIG. 2: Left side perspective view of the Faceor.</p>  <p>FIG. 2</p>	 <p>Skully - Lakehead</p> <p>\$28.00</p> <p>Details</p>
BH-055 Denied	C2 C7 M1 M2 M3 M4	<p>FIG. 3: Front perspective view of the Faceor.</p>  <p>FIG. 3</p>	 <p>Upjoyed Beard Head</p> <p>\$45.00</p> <p>Details</p>
BH-056 Denied	C7 M1 M2 M4		 <p>Bigate-Oakland (C)</p> <p>\$38.00</p> <p>Details</p>







BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-057 Denied	C7 M1 M2 M4	 <p>FIG. 1 Exploded perspective view of a combined ski face mask and hat in a detached position.</p>  <p>FIG. 2 Left side perspective view.</p>  <p>FIG. 3 Front perspective view.</p>  <p>FIG. 4 Right side perspective view.</p>	 <p>Skully - Duke \$28.00 Petals</p>  <p>Barbarian - vagebond \$40.00 Petals</p>  <p>Bilgate-Green Bay (G) \$30.00 Petals</p>  <p>Bilgate-New England (B) \$45.00 Petals</p>
BH-058 Denied	C5 M1 M4 M5 M6		
BH-059 Denied	C7 M1 M2 M4		
BH-060 Denied	C7 M1 M4 M5 M6		









BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-061 Denied	C7 M1 M2 M4	 	 <p>Skully - Popeye \$28.00 petals</p>
BH-062 Denied	C5 M1 M2 M5 M6	 	 <p>Barbarian - Roadie \$45.00 petals</p>
BH-063 Denied	C7 M1 M2 M4	 	 <p>Bilgate-Boise (C) \$35.00 petals</p>
BH-064 Denied	C7 M1 M2 M4		 <p>Bilgate-New England (C) \$38.00 petals</p>

BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-065 Denied	C7 M1 M2 M4	 <p>FIG. 1 Front exploded perspective view of a combined ski face mask and hat in a detached position.</p>	 <p>Trigate-Pittsburgh (C) \$39.99 Petals</p>
BH-066 Denied	C7 M1 M4 M5 M6	 <p>FIG. 2 Left side perspective view.</p>	 <p>Trigate-Denver (E) \$49.99 Petals</p>
BH-067 Denied	C7 M1 M4 M5 M6	 <p>FIG. 3 Front perspective view.</p>	 <p>Trigate-Dallas (B) \$49.99 Petals</p>



BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-068 Denied	C7 M1 M4 M5 M6		 <p>Trigate-Seattle (B)</p> <p>\$40.00</p> <p>DETAILS</p>
BH-069 Denied	C7 M1 M2 M4		 <p>Trigate-Denver (C)</p> <p>\$30.00</p> <p>DETAILS</p>
BH-070 Denied	C7 M1 M2 M4		 <p>Trigate-Dallas (D)</p> <p>\$30.00</p> <p>DETAILS</p>

BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-071 Denied	C7 M1 M4 M5 M6		
BH-072 Denied	C7 M1 M4 M5 M6		
BH-073 Denied	C7 M1 M4 M5 M6		

BEARD HEAD assertion re infringement	Non-infringement Chart list of Features missing; reason for non-infringement	U.S. Design D692,186	BEARDHEAD – 76 DESIGNS
BH-074 Denied	C7 M1 M2 M4		 <p>Delgate-New York 1 (C)</p> <p>\$38.00</p> <p>POWERS</p>
BH-075 Denied	C7 M1 M2 M4		 <p>Delgate-Minnesota (C)</p> <p>\$38.00</p> <p>POWERS</p>
BH-076 Denied	C7 M1 M4 M5		 <p>Barbarian - Pillager</p> <p>\$48.00</p> <p>POWERS</p>

**PRAYER FOR RELIEF**

Wherefore, by reason of the foregoing, Plaintiff BEARD HEAD respectfully requests Declaration of Judgment of this court, with respect to BEARD HEAD:

- a) Judgment that there is no infringement by BEARD HEAD of STAT/Phillips federal design patent D692186;

- b) Judgment that STAT's design patent is not a valid and enforceable design patent pursuant to 35 U.S.C. §102(d) and §172;
- c) Judgment that STAT's design patent is not a valid and enforceable design patent due to inequitable conduct.
- d) Judgment that STAT's design patent is not a valid and enforceable design patent pursuant to 35 U.S.C. §102(a) and (b), lacking novelty;
- e) Judgment that STAT's design patent is not a valid and enforceable design patent pursuant to 35 U.S.C. §103 as obvious in view of the prior art;
- f) Judgment that STAT's design patent is not a valid and enforceable design patent for claiming a functional design;
- g) An assessment of costs, including reasonable attorney fees, pursuant to 35 U.S.C. § 285 with prejudgment interest.
- h) Awarding BEARD HEAD its attorney fees pursuant to 28 U.S.C. 1927; and
- i) Awarding BEARD HEAD such other and further relief determined appropriate based upon the facts and authority of the court.

DATED: Nov. 14, 2014

Respectfully submitted,

  
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