

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

New England Gen-Connect, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:14-cv-13530-IT
)	
US Carburetion, Inc.,)	DEMAND FOR JURY TRIAL
)	
Co-Defendant,)	
)	
&)	
)	
John M. Keller)	
)	
Co-Defendant.)	

**FIRST AMENDED - COMPLAINT FOR DECLARATORY JUDGMENT FOR
NON-INFRINGEMENT**

In accordance to the Federal Rules of Civil Procedure 15(a)(1)(b) New England Gen-Connect, LLC (“Gen-Connect”) has a right to amend its pleading once as a matter of course if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier. The Plaintiff’s pleadings, their Complaint for Declaratory Judgment, is a pleading a responsive pleading is required, was responded to by the Defendants’ by the filing of a Rule 12(b) motion (Docket #7-8) on November 14th. Therefore, Plaintiff, since it is within 21 days of the Defendants’ 12(b) motion, has the right to file an amended Complaint for Declaratory Judgment, without leave or assent of the Plaintiff.

Therefore, in accordance to FRCP 15(a)(1)(b) Gen-Connect, hereby submits this First Amended Complaint for Declaratory Judgment against US Carburetion, Inc. (“Carburetion”) and John M. Keller (“Mr. Keller”), and alleges as follows:

NATURE OF ACTION

1. This is an action for a declaratory judgment of non-infringement of United States Patent No. 8,448,924 (the “’924 Patent”) under 28 U.S.C. §2201 (Declaratory Judgment Act). Gen-Connect also seeks declaratory judgment that the ’924 Patent is invalid.

2. Upon information and belief, Mr. Keller is the owner of the ’924 Patent entitled “Alternative-Fuel Inductor for Engines”.

3. Upon information and belief, Carburetion also asserts ownership in the ’924 Patent.

PARTIES

4. Gen-Connect is a limited liability company organized and existing under the laws of the Commonwealth of Massachusetts with a principal place of business at 35 Pond Park Road, Bay 11, South Shore Industrial Park Hingham, MA 02043.

5. Upon information and belief, Mr. Keller, an individual with the address of 2343 McClung Branch Road, Summersville, WV 26651.

6. Upon information and belief, Carburetion is a corporation organized and existing under the laws of the State of West Virginia, with a principal place of business at 416 Main Street Summersville, WV, 26651.

JURISDICTION AND VENUE

7. This is an action arising under the Patent Laws of the United States, 35 U.S.C. §§101 and 171 et seq. and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

8. This Court has personal jurisdiction over the Defendants' through their purposeful minimum contacts with Massachusetts, by their selling and shipping products to the Massachusetts based Plaintiff on fifteen different occasions over the last two years. In addition to these sales, the Defendants' also operate an interactive and commercial website which has, and continues to, solicit business in the Commonwealth. The domain is www.propane-generators.com. Therefore, the Defendants' have sufficient minimum contacts with Massachusetts to establish personal jurisdiction.

9. In addition to the above, the Defendants' have also sold their goods which are the subject of the '924 Patent, and the Defendants' sent a threatening cease and desist letter to the Plaintiff, which forced the Plaintiff to bring this action involving the '924 Patent, which Mr. Keller is listed as the owner of. Therefore, the Defendants' contacts are related to the present action.

10. The Defendants' purposefully availed themselves to the Commonwealth by their website, transactions within the Commonwealth, and the cease and desist letter to the Plaintiff.

11. Venue is proper pursuant to 28 U.S.C. §§ 1391(b)-(c) because the events and communications between the parties that give rise to Gen-Connect's claim for declaratory relief occurred in Massachusetts, and because upon information and belief, Carburetion and Mr. Keller are subject to the personal jurisdiction in this Court.

12. An actual case or controversy has arisen between the parties. Carburetion demanded that Gen-Connect cease and desist from any use and/or sale of Gen-Connect's Honda EU2000i propane kit, which Carburetion alleges infringers on the '924 Patent owned by Mr. Keller.

FACTS

DEFENDANT'S THREAT OF LITIGATION

13. On August 8, 2014 Carburetion sent a threatening letter to Gen-Connect. Carburetion's letter alleged that the making, selling, and offering for sale, of Gen-Connect's Honda EU2000i propane kit constitutes infringement of the '924 patent. The letter further asserted that Carburetion would "have no choice but to proceed with more drastic measures" and that Gen-Connect would be liable for damages if Gen-Connect continues to make and/or sell their Honda EU2000i propane kit. Exhibit A.

14. Gen-Connect's Honda EU2000i propane kit has not, and does not, infringe, either directly or indirectly, any valid or enforceable claim of the '924 Patent, either literally or under the doctrine of equivalents.

15. No assignment from Mr. Keller to Carburetion has been recorded with United States Patent Office for the '924 Patent, therefore, it appears that Carburetion is asserting these allegations on behalf of Mr. Keller.

16. As a result of Carburetion's threat of litigation and the circumstances surrounding this threat, an actual, present, and justiciable controversy has arisen between Carburetion, Mr. Keller, and Gen-Connect regarding Gen-Connect's manufacturing and sale of its Honda EU2000i propane kit.

COUNT 1

(Declaration of Non-Infringement of Defendant's Alleged Patent)

17. Gen-Connect repeats and re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint.

18. Carburetion has asserted that Gen-Connect's manufacture and sale of its Honda EU2000i propane kit product infringes the '924 Patent and has threatened to bring a lawsuit against Gen-Connect. An actual, present, and justiciable controversy has arisen between Carburetion, Mr. Keller, and Gen-Connect concerning Gen-Connect's manufacture and sale of its Honda EU2000i propane kit.

19. Gen-Connect is not infringing, and has not infringed, directly or indirectly, either literally or under the doctrine of equivalents, any valid or enforceable claim of the '924 Patent.

20. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Gen-Connector requests that the Court declare that Gen-Connector does not infringe and has not infringed any valid and/or enforceable claim of the '924 Patent.

COUNT II

(Declaration of Invalidity and Unenforceability of Defendant's Alleged Patent)

21. Gen-Connect repeats and re-alleges each and every allegation set forth in the preceding paragraphs of this Complaint.

22. United States Patent No. 7,841,322 teaches each and every element of independent claims 1 and 17 of the '924 patent by teaching a method of induction for an axial engine receiving at least two sources of fuel. Exhibit 2.

23. In addition to United States Patent No. 7,841,322, the following references alone, or in combination, teach each and every element of claims 1-19 of the '924 Patent, and/or render the claims and claim elements obvious:

- U.S. Patent 3,198,187 by E. Bartholomew, issued August 3, 1965, for "Induction Systems." This patent discloses a concept of induction for an engine receiving at least one fuel source. Exhibit 3.

- U.S. Patent 4,518,540 by Takayasu, issued May 21, 1985, for "Multi-Fuel Carburetor." This patent discloses a method of induction for an axial engine receiving at least two sources of fuel. Exhibit 4.

24. United States Patent No. 7,841,322 issued on Nov. 30, 2010 and the '924 patent was filed on February 22, 2011, therefore, the public disclosure in the 7,841,322 patent, which references the entirety of the independent claims of the '924 patent, renders these claims invalid under 35 U.S.C. 102(b).

25. United States Patent No. 7,841,322 render the independent claims of the '924 Patent invalid under one or more sections of Title 35 of the U.S. Code, including without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112 because the prior art in the patent was publically disclosed prior to the filing and issuance of the '924 patent and it teaches each and every element of independent claims 1 and 17 of the '924 Patent. Moreover, the 7,841,322 patent, alone, or in combination with the references cited in paragraph 23, teaches each and every element of dependent claims 2-16, and 18-19, and therefore render the dependent claims of the '924 Patent invalid under one or more sections of Title 35 of the U.S. Code, including without limitation, 35 U.S.C. §§ 101, 102, 103 and/or 112.

26. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., Gen-Connect requests that the Court declare that the asserted claims of the '924 Patent are invalid.

PRAYER FOR RELIEF

Wherefore, Gen-Connect respectfully requests that the Court enter judgment in its favor and against Defendants as follows:

- a. declare that Gen-Connect does not infringe and has not infringed any claim of the '924 Patent;
- b. declare that the asserted claims of the '924 Patent are invalid, void, and/or enforceable;
- c. award Gen-Connect its costs and Attorney's fees under 15 U.S.C. §1117, 35 U.S.C. § 285; and,
- d. award such other relief as this Court may deem just and proper.

JURY TRIAL DEMAND

Gen-Connector demands a trial by jury on all issues triable by right of jury.

Date: November 28, 2014

Respectfully submitted by,
Attorneys for Plaintiff
New England Gen-Connect, LLC

/s/ Brendan M. Shortell
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CERTIFICATE OF SERVICE

I certify that I served the foregoing on counsel of record through the Court's ECF system.

Date: November 28, 2014

/s/ Brendan M. Shortell
