

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

HUB PEN COMPANY, INC.

Plaintiff

V.

ACEHIGH TECH CORP.

Defendant.

Civil Action No. 15-cv-10381

**COMPLAINT AND DEMAND  
FOR A JURY TRIAL**

**COMPLAINT**

Plaintiff, Hub Pen Company, Inc. ("Hub "or "Plaintiff"), brings this action against defendant, Acehigh Tech Corp. ("Acehigh" or "Defendant"), for patent infringement. By this Complaint, Hub seeks, *inter alia*, injunctive relief, monetary damages, and attorney's fees under 35 U.S.C. §§ 283, 284 and 285, and alleges as follows:

**THE PARTIES**

1. Hub is a Massachusetts corporation, with its principal place of business at 1525 Washington Street, Braintree, MA 02184. Hub is the owner of numerous patents pertaining to pens and styluses. Among the patents owned by Hub is U.S. Patent No. D 709,949, which claims a design for a combined pen and stylus.

2. Upon information and belief, Defendant is a California corporation with a principal place of business located at 4750 Chino Ave., Suite E, Chino, California 91710.

**JURISDICTION AND VENUE**

3. This action arises under the patent laws of the United States, 35 U.S.C. §§ 271, 281, 283-285.

4. This Court has original and exclusive jurisdiction over the subject matter of this Complaint pursuant to 28 U.S.C. § 1338(a) because this action arises under an act of Congress relating to patents. Jurisdiction is also conferred pursuant to 28 U.S.C. § 1331 because this is a civil action arising under the laws of the United States.

5. Upon information and belief Defendant regularly solicits and does business with parties located and domiciled in Massachusetts, including through its website [www.acehighpromo.com](http://www.acehighpromo.com) (the “Website”). Venue is proper in this District under 28 U.S.C. §1391(b) and (c) and/or §1400(b).

**THE ASSERTED PATENT**

6. U.S. Patent No. D 709,949 entitled “Pen and Stylus” (the “‘949 Patent”), issued on July 29, 2014 on an application filed on January 23, 2013. The ‘949 Patent is assigned to Hub. A true and correct copy of the ‘949 Patent is attached hereto as Exhibit A.

**BACKGROUND FACTS**

7. Hub is a family owned company that sells and custom imprints over 100 million pens annually, and is a leader in the promotional pen market.

8. One of Hub’s most popular pen designs is the JAVALINA® pen which has been copied extensively by Hub’s competitors.

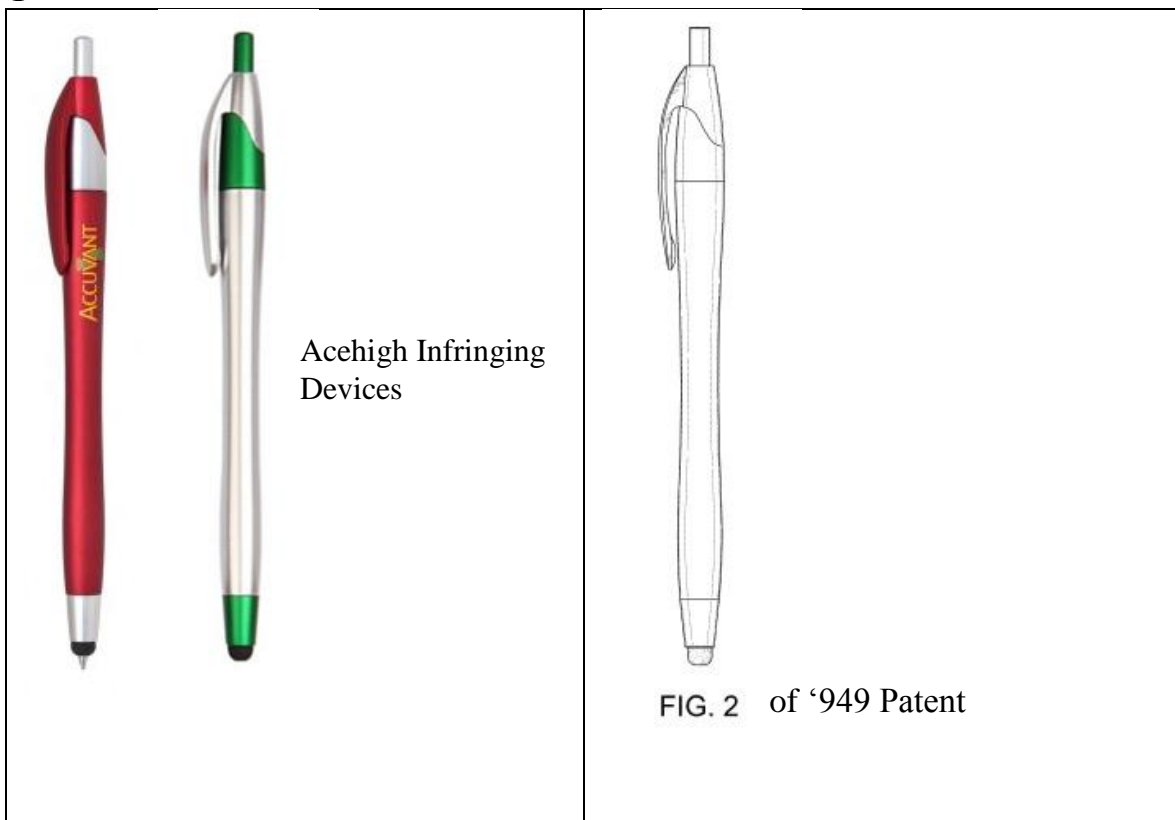
9. Hub designed a JAVALINA® stylus and filed for design patent protection on January 23, 2013 for the new design, which was assigned Application No. 29/443,900 which issued on July 29, 2014 as U.S. Patent No. D 709,949.

10. Defendant Acehigh imports, offers for sale, uses and sells promotional writing instruments, which are available through its website [www.acehighpromo.com](http://www.acehighpromo.com).

11. Upon information and belief Acehigh imports, offers for sale, uses and sells a combination pen and stylus under the names “Jasper Stylus” and “Jasper II Stylus” (collectively “Jasper Stylus”), photos of which are attached hereto as Exhibit B, which pen and stylus infringes one or more claims of the ‘949 patent (the “Infringing Device”).

12. Figure 1 below shows a comparison of the Defendant’s Infringing Device with Figure 2. Of the ‘949 patent.

**Table 1**



13. Hub provided written notice to Acehigh by letter dated December 23, 2014 alleging infringement of the ‘949 Patent by the Infringing Device.

14. Upon information and belief, Acehigh continues to import, offer for sale, use and sell the Infringing Device.

15. As a direct and proximate result of Acehigh's acts of infringement, Hub has suffered damages.

16. As a direct and proximate result of Acehigh's acts of infringement Hub has suffered and continues to suffer irreparable harm for which there is no adequate remedy at law.

**COUNT ONE**

(Infringement of the '949 Patent - 35 U.S.C. § 271)

17. The Plaintiff incorporates paragraphs 1-16 by reference and realleges them as originally and fully set forth herein.

18. Acehigh has knowingly and intentionally infringed, and continues to infringe, the '949 Patent by importing, using, offering for sale, or selling, throughout the United States the Jasper Stylus, which is covered by claims of the '949 Patent, and will continue to do so unless enjoined by this Court.

19. As a direct and proximate consequence of Acehigh's infringing acts, Hub has suffered and will continue to suffer injury and damages, and unless such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and will suffer and continue to suffer injury and damages which are causing them irreparable harm and for which Hub is entitled to relief under 35 U.S.C. §§ 283, 284 and 285.

20. Upon information and belief, the aforementioned infringement is knowing, intentional and willful.

**WHEREFORE**, Plaintiff Hub Pen Company, Inc. respectfully requests that this Court enter judgment in its favor and against Defendant Acehigh Tech Corp and requests relief as follows:

- A. Judgment entered in its favor and against Acehigh on each count of the Complaint;
- B. Declaring that Acehigh has infringed the '949 Patent;
- C. Declaring that the foregoing infringement was willful and knowing;
- D. Declaring this to be an "exceptional" case within the meaning of 35 U.S.C. §285, entitling Hub to an award of its reasonable attorney's fees in this action;
- E. Entry of a preliminary and thereafter permanent injunction prohibiting Acehigh from violating 35 U.S.C. § 271 by infringing the '949 Patent, all pursuant to 35 U.S.C. § 283;
- F. Entry of a preliminary and thereafter permanent injunction ordering Acehigh to recall and remove from retail establishments all devices that infringe the '949 Patent;
- G. Award Hub its damages in accordance with 35 U.S.C. § 284, including actual damages, compensatory damages in an amount no less than a reasonable royalty of Acehigh's gross sales of all Infringing Products, and treble damages;
- H. Award Hub prejudgment interest;
- I. Award Hub its costs, attorney's fees and expenses arising from this suit under 35 U.S.C. § 285;
- J. Entry of an Order that Acehigh:
  1. cease all sales of the Infringing Device;
  2. remove the Infringing Device from the Internet, catalogs, flyers, brochures, displays, advertisements and all other channels of trade;
  3. omit reference to the Infringing Device from the Internet, future catalogs, future flyers, future brochures, future displays, future advertisements and all other channels of trade;

