

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CORNING OPTICAL COMMUNICATIONS LLC,

Plaintiff,

vs.

Civ. _____

DIVERSIFIED MATERIAL SPECIALISTS, INC.
D/B/A DMSI INTERNATIONAL

JURY TRIAL DEMANDED

INJUNCTIVE RELIEF SOUGHT

Defendant.

COMPLAINT

Plaintiff Corning Optical Communications LLC (COC) states as follows for its Complaint against Defendant Diversified Material Specialists, Inc., d/b/a as DMSI International (DMSI):

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, including 35 U.S.C. §§ 271, *et seq.*
2. DMSI has infringed and continues to infringe multiple patents owned by COC concerning fiber optic equipment. DMSI's infringing acts include the sale, offer for sale, manufacture, use, and/or importation of infringing fiber optic equipment.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338, in that this action arises under the federal patent statutes, 35 U.S.C. §§ 271, *et seq.*

4. Venue is appropriate in this district under 28 U.S.C. § 1391(b) and (c) and 1400 (b).
5. The defendant is subject to personal jurisdiction in this district.

THE PARTIES

6. COC is a North Carolina limited liability company with its principal place of business at 800 17th Street NW, Hickory, North Carolina.

7. Upon information and belief, Defendant DMSI is a Georgia corporation with its principal place of business at 180 Triple Diamond Boulevard, Suite B-5, Venice, Florida 34275.

THE ASSERTED PATENTS

8. COC is the owner of all right, title, and interest in United States Patent No. 8,184,938 B2 (the '938 Patent) which was duly and lawfully granted on May 22, 2012 to Corning Cable Systems LLC, naming inventors Terry L. Cooke, Tory A. Klavuhn, David L. Dean, Jr., Juan Garcia, Elmer Mariano, Manuel Lopez, and Juan Miguel Gonzalez, for an invention entitled "Rear-Installable Fiber Optic Modules and Equipment." A true copy of the '938 Patent is attached as Exhibit A. (Corning Cable Systems LLC changed its name to Corning Optical Communications, LLC on or about January 14, 2014).

9. The '938 Patent describes and claims, among other things, fiber optic equipment that supports one or more rear-installable fiber optic modules, which modules support fiber optic connections.

10. COC is the owner of all rights, title, and interest in United States Patent No. 8,452,148 B2 (the '148 Patent) which was duly and lawfully granted on May 28, 2013 to Corning Cable Systems LLC, naming inventors Terry L. Cooke, Tory A. Klavuhn, David L. Dean, Jr., Juan Garcia, Elmer Mariano, Manuel Lopez, and Juan Miguel Gonzalez, for an

invention entitled “Independently Translatable Modules and Fiber Optic Equipment Trays in Fiber Optic Equipment.” A true copy of the ’148 Patent is attached as Exhibit B.

11. The ’148 Patent describes and claims, among other things, fiber optic equipment that supports independently translatable fiber optic modules and/or fiber optic equipment trays containing one or more fiber optic modules.

12. COC is the owner of all right, title, and interest in United States Patent No. 8,712,206 B2 (the ’206 Patent) which was duly and lawfully granted on April 29, 2014 to Corning Cable Systems LLC, naming inventors Terry L. Cooke, Gerald J. Davis, David L. Dean, Jr., Marco A. Gonzalez Garcia, Tory A. Klavuhn, Manuel A. Lopez Sanchez, Brian K. Rhoney, and Alan W. Ugolini, for an invention entitled “High-Density Fiber Optic Modules and Module Housings and Related Equipment.” A true copy of the ’206 Patent is attached as Exhibit C.

13. The ’206 Patent describes and claims, among other things, high density fiber optic modules, fiber optic module housings, and related equipment.

14. COC is the owner of all right, title, and interest in United States Patent No. 8,538,226 B2 (the ’226 Patent) which was duly and lawfully granted on September 17, 2013 to Corning Cable Systems LLC, naming inventors Elli Makrides-Saravanos, Kevin L. Strause, and Antwan J. Works, for an invention entitled “Fiber Optic Equipment Guides and Rails Configured with Stopping Positions and Related Equipment and Methods.” A true copy of the ’226 Patent is attached as Exhibit D.

15. The ’226 Patent describes and claims, among other things, fiber optic equipment guides and rails and related methods.

DMSI’S PRODUCTS

16. According to its website, DMSI is a company specializing in fiber optic connectivity products for use in plants and data centers.

17. DMSI describes its HD Ultra Solutions product line as “high density MTP® trunk cables, modules, and rack mount hardware ...” with modules that “can be installed from the front or rear of the enclosure ...” using “a sliding tray system for installation and access of the modules.” Copies of materials promoting DMSI’s “HD Ultra Solutions and MTP Modules” products are attached as Exhibit E.

18. DMSI describes its IllumiCore® Ultra Solutions product line as “MTP® trunk cables, modules, hardware, and patch cords designed for high density applications.” DMSI advertises that its IllumiCore® Ultra Modules allow for installation or removal of the module with only one hand and that its “[m]odules can be installed from the front, or the rear of the enclosure.” Copies of materials promoting DMSI’s “IllumiCore® Ultra Solutions” are attached as Exhibit F.

19. DMSI asserts that it is “changing the market” for fiber optic products by offering lower-cost alternatives to products offered by other manufacturers. A copy of DMSI’s promotional materials for its IllumiCore product line, of which its HD Ultra Solutions and IllumiCore ® Ultra Solutions products are and/or were a part, is attached as Exhibit G.

CLAIMS FOR RELIEF

Count I: Patent Infringement of U.S. Patent No. 8,184,938 B2

20. DMSI has infringed, directly, contributorily, and/or by inducement, independent claim 1, and its dependent claims, of the '938 Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, fiber optic equipment products covered by the '938 Patent.

21. DMSI has made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling products that are specifically described and claimed in the '938 Patent, including but not limited to DMSI's "HD Ultra Solutions" product line.

22. DMSI has manufactured and sold and/or manufactures and sells its infringing products, including its "HD Ultra Solutions" product line, for use by its customers in high-density fiber optic applications. DMSI's infringing products do not have an alternate, non-infringing use.

23. DMSI is on notice of COC's '938 Patent and is on notice of COC's own products, including but not limited to its Pretium EDGE® product line.

24. The aforesaid acts by DMSI are without right, license, or permission from COC.

25. On information and belief, DMSI has willfully, deliberately, and intentionally infringed COC's '938 Patent.

26. DMSI's willful, deliberate, and intentional infringement of the '938 Patent has caused COC irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of good will, in an amount to be determined at trial.

27. DMSI's willful, deliberate, and intentional infringement of the '938 Patent has also caused COC further irreparable harm and damages, and will entitle it to recover, among other things, treble damages, attorneys' fees, and costs.

28. On information and belief, DMSI intends to continue the infringing activities described in paragraphs 20-25 above.

Count II: Patent Infringement of U.S. Patent No. 8,452,148 B2

29. COC incorporates herein and realleges, as if fully set forth in this Paragraph, the allegations contained in Paragraphs 1-19 above.

30. DMSI has infringed, directly, contributorily, and/or by inducement, independent claim 1, and its dependent claims, of the '148 Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, fiber optic equipment products covered by the '148 Patent.

31. DMSI has made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling products that are specifically described and claimed in the '148 Patent, including but not limited to DMSI's "HD Ultra Solutions" product line.

32. DMSI has manufactured and sold and/or manufactures and sells its infringing products, including its "HD Ultra Solutions" product line, for use by its customers in high-density fiber optic applications. DMSI's infringing products do not have an alternate, non-infringing use.

33. DMSI is on notice that COC's own products, including but not limited to its Pretium EDGE® product line.

34. The aforesaid acts by DMSI are without right, license, or permission from COC.

35. On information and belief, DMSI has willfully, deliberately, and intentionally infringed COC's '148 Patent.

36. DMSI's willful, deliberate, and intentional infringement of the '148 Patent has caused COC irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of good will, in an amount to be determined at trial.

37. DMSI's willful, deliberate, and intentional infringement of the '148 Patent has also caused COC further irreparable harm and damages, and will entitle it to recover, among other things, treble damages, attorneys' fees, and costs.

38. On information and belief, DMSI intends to continue the infringing activities described in paragraphs 30-35 above.

Count III: Patent Infringement of U.S. Patent No. 8,712,206 B2

39. COC incorporates herein and realleges, as if fully set forth in this Paragraph, the allegations contained in Paragraphs 1-19 above.

40. DMSI has infringed, directly, contributorily, and/or by inducement, independent claims 1, 14, 26, 41, 46, 48, 52, and/or 63 and their dependent claims, of the '206 Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, fiber optic modules, housings, or related equipment covered by the '206 Patent .

41. DMSI has made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling products that are specifically described and claimed in the '206 Patent, including but not limited to DMSI's "HD Ultra Solutions" and DMSI's "IllumiCore® Ultra Solutions" high-density fiber optic modules, housings, and/or related equipment.

42. DMSI has made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell or selling its infringing products, including but not limited to DMSI's "HD Ultra Solutions" and DMSI's "IllumiCore® Ultra Solutions" high-density modules, housings, and/or related equipment for use by its customers in high-density fiber optic applications. DMSI's infringing products do not have an alternate, non-infringing use.

43. DMSI is on notice of COC's own products, including but not limited to its Pretium EDGE® high-density fiber optic modules, housings, and related equipment.

44. The aforesaid acts by DMSI are without right, license, or permission from COC.

45. On information and belief, DMSI has willfully, deliberately, and intentionally infringed COC's '206 Patent.

46. DMSI's willful, deliberate, and intentional infringement of the '206 Patent has caused COC irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of good will, in an amount to be determined at trial.

47. DMSI's willful, deliberate, and intentional infringement of the '206 Patent has also caused COC further irreparable harm and damages, and will entitle it to recover, among other things, treble damages, attorneys' fees, and costs.

48. On information and belief, DMSI intends to continue the infringing activities described in paragraphs 40-45 above.

Count IV: Patent Infringement of U.S. Patent No. 8,538,226 B2

49. COC incorporates herein and realleges, as if fully set forth in this Paragraph, the allegations contained in Paragraphs 1-19 above.

50. DMSI has infringed, directly, contributorily, and/or by inducement, independent claims 1, 14, 20, 26, 37, and/or 45 and their dependent claims, of the '226 Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, fiber optic equipment guides and rails covered by the '226 Patent.

51. Upon information and belief, DMSI has also infringed, directly, contributorily, and/or by inducement, independent claim 32 and its dependent claims, of the '226 Patent by making, using, offering to sell, selling, and/or importing, within this district or elsewhere in the United States, fiber optic equipment guides and rails using the methods covered by these claims of the '226 Patent.

52. DMSI has made, used, imported, offered to sell, or sold and/or is making, using, importing, offering to sell, or selling products or that are specifically described and claimed in the '226 Patent, including but not limited to DMSI's "HD Ultra Solutions" and DMSI's IllumiCore® Ultra Solutions" product lines.

53. DMSI has manufactured and sold and/or manufactures and sells its infringing products, including its DMSI's "HD Ultra Solutions" and DMSI's "IllumiCore® Ultra Solutions" product lines, for use by its customers in high-density fiber optic applications. DMSI's infringing products do not have an alternate, non-infringing use.

54. DMSI is on notice of COC's own products, including but not limited to its Pretium EDGE® product line.

55. The aforesaid acts by DMSI are without right, license, or permission from COC.

56. On information and belief, DMSI has willfully, deliberately, and intentionally infringed COC's '226 Patent.

57. DMSI's willful, deliberate, and intentional infringement of the '226 Patent has caused COC irreparable harm and damages, including lost sales, lost profits, lost sales opportunities, and loss of good will, in an amount to be determined at trial.

58. DMSI's willful, deliberate, and intentional infringement of the '226 Patent has also caused COC further irreparable harm and damages, and will entitle it to recover, among other things, treble damages, attorneys' fees, and costs.

59. On information and belief, DMSI intends to continue the infringing activities described in paragraphs 50-56 above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff COC respectfully requests the following relief:

A. A judgment and decree that DMSI has infringed the '938, '148, '206, and '226 Patents;

B. A preliminary and permanent injunction restraining and enjoining DMSI, its officers, agents, attorneys, employees, and those acting in privity or concert with them, from engaging in the commercial manufacture, use, offer to sell, or sale within the United States, or importation into the United States, of products and/or methods claimed in COC's '938, '148, '206, and '226 Patents or components or materials especially made or especially adapted for use in an infringement of COC's '938, '148, '206, and '226 Patents;

C. An accounting of all damages to COC arising from DMSI's infringement, inducement of infringement, contributory infringement, and willful infringement, and that such damages be awarded to COC with interest and costs;

D. An order requiring DMSI to recall all of its infringing products currently in the marketplace;

E. A determination that DMSI's infringement of the '938, '148, '206, and '226 Patents has been willful, and an award of treble damages pursuant to 35 U.S.C. § 284;

F. A determination that, pursuant to 35 U.S.C. § 285, this is an exceptional case and an award of the costs and reasonable attorneys' fees incurred by COC in connection with this action; and

G. awarding any such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Corning requests a trial by jury in this matter.

Date: April 2, 2015

Respectfully submitted,

/s/ Woodrow H. Pollack

WOODROW H. POLLACK

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