

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CHEMICAL LIGHT, INC.,)	
)	
Plaintiff,)	Case No. 11-CV-5667
)	
vs.)	
)	
SUN PRODUCTS USA, LLC, JOHN GILL, and NIGHT SPORTS USA LLC,)	<u>Jury Trial Demanded</u>
)	
Defendants.)	

THIRD AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Chemical Light, Inc., through its attorneys, complains of defendants Sun Products USA, LLC, John M. Gill,¹ and Night Sports USA LLC as follows:

1. This action arises under the patent laws of the United States, Title 35 of the United States Code.

PARTIES

2. Plaintiff Chemical Light, Inc. (“Chemical Light”) is an Illinois corporation with its principal place of business in Vernon Hills, Illinois.

3. Defendant Sun Products USA, LLC (“Sun Products USA”) is a Wisconsin limited liability company formed on or about July 1, 2010. On information and belief, Sun Products USA has its principal place of business in Minnesota.

¹ Mr. Gill is currently a debtor in a chapter 7 bankruptcy proceeding pending in the Bankruptcy Court for the District of Minnesota. Thus, Plaintiff’s causes of action against Mr. Gill are stayed in accordance with Section 362 of the Bankruptcy Code, and Plaintiff will not proceed with its causes of action against Mr. Gill until the automatic stay is no longer in effect.

4. Defendant John M. Gill (“Gill”) is an individual who, on information and belief, resides in Minnesota. Defendant Gill is the founder and CEO of Sun Products USA and Night Sports USA and exercises direct control over the commercial activities of Sun Products USA and Night Sports USA, including the development, manufacture and sale of commercial products.

5. Defendant Night Sports USA LLC (“Night Sports”) is a Minnesota limited liability company formed on or about July 18, 2013. On information and belief, Night Sports has its principal place of business in Minnesota.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§1331 and 1338(a) because this action arises under the patent laws of the United States.

7. This Court has personal jurisdiction over Defendants because Defendants have purposefully availed themselves of the privilege of conducting business in this District and have committed acts of infringement in this District.

8. Venue is proper in this District under 28 U.S.C. §§1391(c) and 1400(b).

FACTS COMMON TO ALL COUNTS

9. On March 28, 2000, the United States Patent and Trademark Office issued United States Patent No. 6,042,487 to Schrimmer (the “Schrimmer ’487” patent), entitled “Illuminated Golf Ball.” A copy of the Schrimmer ’487 patent is attached as Exhibit A.

10. The Schrimmer ’487 patent has been recognized as valid and enforceable by industry members including Gill and his prior companies, Sun Products, Inc. and Twilight Tracer, Inc.

11. In 2003 Chemical Light sued Sun Products, Inc. in this District in an action entitled *Chemical Light, Inc. v. Sun Products, Inc., et al.*, Case No. 03-C-1279. In that action,

Chemical Light alleged that Sun Products, Inc. infringed the Schrimmer '487 patent by manufacturing, or having manufactured, and selling an illuminated golf ball with the name "Twilight Tracer."

12. Sun Products, Inc., through Gill, agreed to a settlement of that action and Gill's companies, Sun Products, Inc. and Twilight Tracer, Inc., became a distributor, under license from Chemical Light, of illuminated golf balls that are the subject of the Schrimmer '487 patent, such as the Twilight Tracer ball.

13. In the Settlement Agreement and accompanying Agreement, Gill recognized that the Twilight Tracer ball is within the scope of the Schrimmer '487 patent.

14. Sun Products, Inc. and Twilight Tracer, Inc. have both been administratively dissolved by the Secretary of State of Minnesota.

15. At some point in time, currently unknown to Plaintiff, Sun Products USA, at the behest of Gill, began to offer for sale and sell the Twilight Supernova golf ball. Defendants did so without authorization from Plaintiff but with full and specific knowledge that the Twilight Tracer ball falls within the scope of the Schrimmer '487 patent.

16. Sun Products USA was administratively dissolved by the Secretary of State of Wisconsin on September 10, 2013.

17. On July 11, 2013, Gill filed for protection under chapter 7 of the Bankruptcy Code.

18. On July 18, 2013, Gill formed Night Sports.

19. At some point in time, currently unknown to Plaintiff, Night Sports began to offer for sale and sell the Night Sports Light-Up LED Golf Ball. Night Sports did so without

authorization from Plaintiff but with full and specific knowledge that the Twilight Tracer ball falls within the scope of the Schrimmer '487 patent.

20. The Night Sports' website expressly states that "The Twilight Supernova Night Golf Ball has been replaced by the Night Sports Light-up Golf Ball."

COUNT I

Willful Infringement of U.S. Patent No. 6,042,487 by Sun Products USA

21. Plaintiff incorporates by reference the allegations in paragraphs 1 - 20 above as if fully set forth at length.

22. Chemical Light is the sole owner of the entire right, title and interest in the Schrimmer '487 patent, including the right to sue for infringement.

23. Chemical Light has given notice of its rights under the Schrimmer '487 patent pursuant to 35 U.S.C. §287.

24. Sun Products USA has infringed and continues to infringe the Schrimmer '487 patent in violation of 35 U.S.C. §271 by making, using, offering to sell, selling and/or importing into the United States products that infringe one or more of the claims of the Schrimmer '487 patent, including, without limitation, the illuminated golf balls advertised and sold under the name "Twilight Tracer" and "Twilight Supernova." Sun Products USA's infringement will continue unless and until enjoined by this Court.

25. Sun Products USA has acted and continues to act despite not only an objectively high likelihood that its actions constitute infringement, but actual knowledge that its sales of the Twilight Tracer and the Twilight Supernova infringe a valid patent. Accordingly, Sun Products USA has infringed willfully or with reckless disregard for Chemical Light's rights.

26. Chemical Light has suffered and will continue to suffer damages as a result of the unlawful infringement of the Schrimmer '487 patent by Sun Products USA, and Chemical Light is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty and/or the profits lost by Chemical Light due to Sun Products' infringement.

27. Sun Products USA's acts of infringement have caused and will continue to cause irreparable harm to Chemical Light unless and until enjoined by this Court.

COUNT II

Infringement of U.S. Patent No. 6,042,487 by Gill

28. Plaintiff incorporates by reference the allegations in paragraphs 1 – 27 above as if fully set forth at length.

29. Using his direct control over the commercial activities of Sun Products USA, Gill has directly and/or indirectly infringed the Schrimmer '487 patent and continues to directly and/or indirectly infringe the Schrimmer '487 patent in violation of 35 U.S.C. §271 by making, using, offering to sell, selling and/or importing into the United States products that infringe one or more of the claims of the Schrimmer '487 patent, including, without limitation, the illuminated golf balls advertised and sold under the names "Twilight Tracer" and "Twilight Supernova."

30. Gill actively, knowingly, and deliberately induced Sun Products USA's infringement of the Schrimmer '487 patent. Gill acted with the specific intent to encourage, aid and abet the infringement by Sun Products USA.

31. As a result of Gill's infringing activities, Chemical Light has been and will be damaged. Chemical Light is entitled to recover from Gill damages adequate to compensate it for the infringement, but in no event less than a reasonable royalty.

32. Gill has acted and continues to act despite not only a high likelihood that his actions constitute infringement of a valid patent, but actual knowledge that sales of the Twilight Tracer and Twilight Supernova infringe the Schrimmer '487 patent. Accordingly, Gill has infringed willfully or with reckless disregard for Chemical Light's rights.

33. Gill's acts of infringement have caused and will continue to cause irreparable harm to Chemical Light unless and until enjoined by this Court.

COUNT III

Willful Infringement of U.S. Patent No. 6,042,487 by Night Sports USA LLC

34. Plaintiff incorporates by reference the allegations in paragraphs 1 - 33 above as if fully set forth at length.

35. Chemical Light is the sole owner of the entire right, title and interest in the Schrimmer '487 patent, including the right to sue for infringement.

36. Chemical Light has given notice of its rights under the Schrimmer '487 patent pursuant to 35 U.S.C. §287.

37. Night Sports sells and offers to sell the Night Sports Light-Up LED Golf Ball. The Night Sports Light-Up LED Golf Ball is sold in 1 pack, 2 packs, 3 packs, 4 packs, 12 packs, and is also sold with other goods, i.e., the "Hole-in-One Package."

38. The Night Sports Light-Up LED Golf Ball has an outer shell made of Surlyn. Surlyn is a tough, water-resistant material that maintains the functionality of the golf ball when struck and subjected to water.

39. The Night Sports Light-Up LED Golf Ball has an inner core.

40. The Night Sports Light-Up LED Golf Ball contains a battery and at least one LED light.

41. When the Night Sports Light-Up LED Golf Ball is impacted, the LED inside the golf ball switches on and stays active for eight minutes.

42. Night Sports has infringed and continues to infringe the Schrimmer '487 patent in violation of 35 U.S.C. §271 by making, using, offering to sell, selling and/or importing into the United States products that infringe one or more of the claims of the Schrimmer '487 patent, including, without limitation, the illuminated golf balls advertised and sold under the name "Night Sports Light-Up LED." An example claim chart demonstrating the Night Sports Light-Up LED Golf Ball as compared to claim 1 is attached as Exhibit B. Night Sports' infringement will continue unless and until enjoined by this Court.

43. Night Sports has acted and continues to act despite not only an objectively high likelihood that its actions constitute infringement, but actual knowledge that its sales of the Light-Up LED Golf Ball infringe a valid patent. Accordingly, Night Sports has infringed willfully or with reckless disregard for Chemical Light's rights.

44. Chemical Light has suffered and will continue to suffer damages as a result of the unlawful infringement of the Schrimmer '487 patent by Night Sports, and Chemical Light is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty and/or the profits lost by Chemical Light due to Night Sports' infringement.

45. Night Sports' acts of infringement have caused and will continue to cause irreparable harm to Chemical Light unless and until enjoined by this Court.

COUNT IV

**Inducement
by Night Sports USA LLC**

46. Plaintiff incorporates by reference the allegations in paragraphs 1 - 45 above as if fully set forth at length.

47. Night Sports has continued to demonstrate and encourage use of the Night Sports Light-Up LED Golf Ball by its customers through instructions it provides on its website directing its customers in setting up night golf tournaments, as well as through demonstration videos provided by Night Sports on its website, as well as a demonstration video placed by Night Sports on YouTube showing the use of its Night Sports Light-Up LED Golf Ball by a Mr. Pat Dempsey.

48. Despite having actual knowledge from Chemical Light of the accusations of ongoing infringement, Night Sports has not taken any steps to remove such instructions or demonstration videos.

49. Night Sports' ongoing instructions and encouragement of the use by its customers of the Night Sports Light-Up LED Golf Ball are being done with the knowledge that the induced acts constitute patent infringement. Thus, such activities constitute inducement of infringement pursuant to 35 U.S.C. §271(b). The direct infringers for the purposes of Night Sports' inducement of infringement include, at least, customers and end users of the Night Sports Light-Up LED Golf Balls. Night Sports' infringement will continue unless and until enjoined by this Court.

50. Night Sports has acted and continues to act despite not only an objectively high likelihood that its actions constitute induced infringement, but actual knowledge that its acts infringe a valid patent. Accordingly, Night Sports has infringed willfully or with reckless disregard for Chemical Lights' rights.

51. Chemical Light has suffered and will continue to suffer damages as a result of the unlawful induced infringement of the Schrimmer '487 patent by Night Sports, and Chemical Light is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty and/or the profits lost by Chemical Light as a result of Night Sports' induced infringement.

52. Nighth Sports' acts of induced infringement have caused and will continue to cause irreparable harm to Chemical Light unless and until enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, Chemical Light respectfully requests that this Court enter judgment in its favor and against Defendants Sun Products USA, LLC, John M. Gill, and Night Sports USA LLC granting the following relief:

A. A judgment declaring that Sun Products USA, LLC, John M. Gill, and Night Sports USA LLC have committed direct and induced infringement of the Schrimmer '487 patent;

B. An order enjoining Sun Products USA, LLC, John M. Gill, and Night Sports USA LLC and all other officers, directors, agents, employees, parents, subsidiaries and affiliates of Sun Products USA, LLC and all those acting in concert with any of them from infringing, inducing infringement, or contributing to the infringement of the Schrimmer '487 patent;

C. An award of damages as permitted under 35 U.S.C §284 sufficient to compensate Chemical Light for Defendants' past infringement and any future infringement, including both compensatory and treble damages for willful infringement, together with prejudgment interest from the date the infringement began;

D. A finding that this case is exceptional within the meaning of 35 U.S.C. §285 and an award to Chemical Light of reasonable attorneys' fees, expenses, and costs;

E. Such other and further relief as this Court may deem just or proper.

JURY DEMAND

Chemical Light hereby demands a trial by jury on all issues so triable.

Dated: January 30, 2015

Respectfully submitted,

CHEMICAL LIGHT, INC.

By: /s/ Elizabeth B. Vandesteeg
One of Its Attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2015, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the individuals listed:

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