

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DEDOES INDUSTRIES, INC.,
a Michigan corporation,

Plaintiff,

Case No. 2:15-cv-10765

vs.

Hon. Gerald E. Rosen

Magistrate Judge R. Steven Whalen

X-PERT PAINT MIXING SYSTEMS,
INC., a Minnesota corporation,

Defendant.

FIRST AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

PARTIES

1. Dedoes Industries, Inc. (“Dedoes”) is a Michigan corporation having a principal place of business at 1060 West Maple Road, Walled Lake, Michigan 48390.

2. Upon information and belief, X-Pert Paint Mixing Systems, Inc. (“X-Pert”) is a corporation of Minnesota, having offices and a place of business at 2715 Lincoln Drive, Roseville, Minnesota 55113.

JURISDICTION AND VENUE

3. Dedoes alleges that X-Pert has infringed U.S. Letters Patent No. 5,947,598 (“the ‘598 Patent” or “the Dedoes’ Patent”), a copy of which is attached

as **Exhibit A**. Accordingly, this Complaint arises under the patent laws of the United States, Title 35 of the United States Code, 35 U.S.C § 100 *et seq.*, and this Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331 and 1338(a).

4. A justiciable controversy also exists between Dedoes and X-Pert with respect to United States Patent Numbers 6,230,938 (“the ‘938 Patent”), 6,474,516 (“the ‘516 Patent”) and 6,755,326 (“the ‘326 Patent”), by virtue of allegations by X-Pert against Dedoes asserting that Dedoes products infringe at least one claim of each of those patents. Dedoes asserts that it does not infringe those patents and/or that those patents are invalid. Therefore, subject matter jurisdiction is also proper under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 and 2202 *et seq.* Copies of the ‘938 Patent, the ‘516 Patent and the ‘326 Patent (collectively “the X-Pert Patents”) are attached as **Exhibits B, C, and D**, respectively.

5. Personal jurisdiction over X-Pert, and venue in this judicial District, is proper under 28 U.S.C. § 1391 and/or 1400(b) as this action relates to patents. On information and belief, wrongful acts of X-Pert as averred herein were committed in this judicial district and/or X-Pert resides within this judicial district.

DEDOES

6. Dedoes manufactures paint mixing equipment for the refinish industry.

7. Customers of Dedoes products include, but are not limited to, paint manufacturers and vehicle body shops.

8. Dedoes products include, but are not limited to, mixing machines, stirring lids, paint shakers, cabinets, blending tables, and UV equipment.

9. Brochures for two models of Dedoes' paint mixing machines, the model A1, the A5, are attached as **Exhibit E**.

10. Dedoes paint lid products are offered for sale under at least the following trade names: (i) Alliance ClicSeal; (ii) Alliance ClicSeal Plus; (iii) ClicSeal RJ; and (iv) Screw Top. Brochures for each of the aforementioned lid models are attached as **Exhibit F**.

X-PERT

11. X-Pert offers to sell, and sells, paint mixing and pouring equipment. X-Pert's paint mixing and pouring equipment may, for example, be used to mix paint so that the paint achieves a desired color.

12. X-Pert also offers to sell and sells paint mixing lids.

13. Customers of X-Pert's paint mixing lids include, but are not limited to, vehicle body shops.

14. X-Pert advertises that X-Pert's paint mixing lids are "the only virtually airtight lid".

15. X-Pert advertises that X-Pert's paint mixing lids include a "[s]uperior vent hold location with O-ring airtight seal."

16. X-Pert advertises that X-Pert's paint mixing lids include "CAM lock seals" that are "designed to minimize leaking and solvent evaporation".

17. X-Pert advertises that X-Pert's paint mixing lids include a "double-sealed pour spout using a foam and Teflon slide".

18. X-Pert advertises that X-Pert's paint mixing lids are "Available in Fillon® Quick Link™, FAS and Dedoes styles".

19. An image displaying one view of X-Pert's "Dedoes style" paint mixing lid is show below in Figure 1:



Figure 1

20. X-Pert displays the image shown above in Figure 1 on X-Pert's website posted to www.x-pertinc.com.

21. On information and belief, at least some of X-Pert's paint mixing lids include cog driven stirring elements.

22. On information and belief, X-Pert's "Dedoes style" paint mixing lid is designed to be used with paint mixing machines manufactured by Dedoes.

23. On information and belief, X-Pert's "Dedoes style" paint mixing lid may be used with at least one of the Dedoes paint mixing machines identified above in paragraph 9.

24. On information and belief, X-Pert has used X-Pert's "Dedoes style" paint mixing lid on at least one model of paint mixing machines identified above in paragraph 9 at least for the purpose of ensuring that the lid properly functioned with the machine.

25. On information and belief, X-Pert is offering for sale at least one model of paint mixing lid that was specifically designed by X-Pert to be used with paint mixing machines manufactured by Dedoes.

THE PATENTS-IN-SUIT

THE DEDOES PATENT

26. Dedoes is the owner by assignment of the '598 Patent and/or the Dedoes Patent. The title of Dedoes Patent is Automatic Paint Stirring Equipment with Improved Driving Means. The Dedoes Patent issued on September 7, 1999, based on an application filed on September 15, 1998.

27. On information and belief, X-Pert had actual knowledge of the '598 Patent prior to the service of this Complaint.

28. X-Pert has actual knowledge of the '598 Patent at least as early as the date it is served with this Complaint.

X-PERT PATENTS

29. On information and belief, X-Pert is the owner by assignment of the '938 Patent. The title of the '938 Patent is Seal Structure for a Fluid Pour Spout of a Paint Container Lid Member. The '938 Patent was issued on May 15, 2001.

30. On information and belief, X-Pert is the owner by assignment of the '516 Patent. The title of the '516 Patent is Seal Structure for a Fluid Pour Spout of a Paint Container Lid Member. The '516 Patent was issued on November 5, 2002.

31. On information and belief, X-Pert is the owner by assignment of the '326 Patent. The title of the '326 Patent is Seal Structure for a Fluid Pour Spout of a Paint Container Lid Member. The '326 Patent was issued on June 29, 2004.

32. The '938 Patent, the '516 Patent and the '326 Patent all claim priority from U.S. Patent Application No. 09/416,871, which was filed on October 13, 1999.

33. X-Pert has alleged that Dedoes lids infringe one or more claims of the '938 Patent, the '516 Patent and the '326 Patent.

COUNT I – PATENT INFRINGEMENT

(Infringement of the Dedoes Patent)

34. Dedoes incorporates by reference the averments of Paragraphs 1 through 33 as though fully set forth herein.

35. Upon information and belief, X-Pert has directly infringed at least claim 1 of the '598 Patent, by at least using paint mixing lids having cog driven stirring elements with paint mixing machines so the resulting apparatus is identical or equivalent to every requirement of claim 1, and X-Pert will continue to do so, to the irreparable damage of Dedoes unless enjoined by this Court; 35 U.S.C. §271(a)-(c).

36. Upon information and belief, X-Pert has used, sold, offered for sale and/or imported into the United States, paint mixing lids using lids with cog driven stirring elements that are used by X-Pert's customers and/or third parties with paint mixing machines owned by those customers and/or third parties, so as to infringe at least one claim of the '598 Patent. The X-Pert paint mixing lids are not common

components suitable for a non-infringing use. X-Pert supplied (and/or continues to supply) the paint mixing lids to customers and third parties with knowledge of the ‘598 patent and knowledge that the paint mixing lids (including particularly the so-called “Dedoes style” lid) were especially made or adapted for use in an infringing manner. Upon information and belief, the aforementioned actions constitute contributory infringement of the ‘598 Patent in violation of 35 U.S.C. 271(c) that has occurred in this judicial district and elsewhere throughout the United States to the irreparable damage of Dedoes, and that will continue unless enjoined by this Court.

37. Upon information and belief, X-Pert has used, sold, offered for sale and/or imported into the United States, paint mixing lids using lids with cog driven stirring elements that are used by X-Pert’s customers and/or third parties with paint mixing machines owned by those customers and/or third parties, so as to infringe at least one claim of the ‘598 Patent. X-Pert advertises, promotes and otherwise instructs the customers and/or third parties the paint mixing lids to use the paint mixing lids to induce the customers and/or third parties to infringe the ‘598 Patent by actions that include, but are not limited to, advertising and promoting a so-called “Dedoes style” lid. X-Pert has induced (and/or continues to supply) the paint mixing lids to customers and third parties with knowledge of the ‘598 patent. Upon information and belief, the aforementioned actions constitute inducing

infringement of the '598 Patent in violation of 35 U.S.C. 271(b) that has occurred in this judicial district and elsewhere throughout the United States to the irreparable damage of Dedoes, and that will continue unless enjoined by this Court.

38. Upon information and belief, said infringement was willful.

**CLAIM II - DECLARATORY JUDGMENT
OF NON-INFRINGEMENT AND INVALIDITY
WITH RESPECT TO THE '938 PATENT**

39. Dedoes incorporates by reference the averments of Paragraphs 1 through 38 as though fully set forth herein.

40. Dedoes seeks a declaratory judgment that as to each claim of the '938 patent the use, sale, offer for sale, or importation of certain paint lid products, including certain ClicSeal paint lid products, by Dedoes has not infringed and will not infringe any claim directly, indirectly, literally, under the doctrine of equivalents or in any manner. For example, on information and belief, Dedoes alleges that its paint mixing lids do not infringe, literally or under the doctrine of equivalents, one or more limitations, as construed by this Court, of at least each independent claim of the '938 patent. Also, the accused devices do not contributorily infringe the '938 patent for at least the reason that there has been no direct infringement. Also, Dedoes did not have the requisite intent to induce infringement of the '938 patent.

41. Dedoes also seeks a declaratory judgment that each claim of the ‘938 Patent is void and invalid for failure to comply with one or more requirements of 35 U.S.C. § 101, 102, 103 and/or 112.

42. In particular, Dedoes seeks a declaratory judgment that each claim of the ‘516 patent is invalid under 35 U.S.C. § 102 or 103 in light of prior art, including without limitation, at least U.S. Patent No. 2,154,581 alone, or in combination with U.S. Patent Numbers 2,050,809, 2,126,651, 2,364,206 and/or other prior art references.

**CLAIM III - DECLARATORY JUDGMENT OF NON-INFRINGEMENT
AND INVALIDITY WITH RESPECT TO THE ‘516 PATENT**

43. Dedoes incorporates by reference the averments of Paragraphs 1 through 42 as though fully set forth herein.

44. Dedoes seeks a declaratory judgment that, as to each claim of the ‘516 patent the use, sale, offer for sale, or importation of certain paint lid products, including certain ClicSeal paint lid products, by Dedoes has not infringed and will not infringe any claim directly, indirectly, literally, under the doctrine of equivalents or in any manner. For example, on information and belief, Dedoes alleges that the relevant accused devices do not infringe, literally or under the doctrine of equivalents, one or more limitations, as construed by this Court, of at least each independent claim of the ‘516 patent. Also, the accused devices do not

contributorily infringe the '516 patent for at least the reason that said devices are each a staple article or commodity of commerce suitable for substantial noninfringing use. Also, Dedoes did not have the requisite intent to induce infringement of the '516 patent.

45. Dedoes seeks a declaratory judgment that each claim of the '938 Patent is void and invalid for failure to comply with one or more requirements of 35 U.S.C. § 101, 102, 103 and/or 112.

46. In particular, Dedoes seeks a declaratory judgment that each claim of the '516 patent is invalid under 35 U.S.C. § 102 or 103 in light of prior art, including without limitation, at least U.S. Patent No. 2,154,581 alone, or in combination with French Patent Application No. 2 555 141 and/or other prior art references including, but not limited to, U.S. Patent Numbers 2,126,651, 2,257,370, 2,364,206, 4,750,648, 4,793,528, 5,020,700, 5,358,153, 5,622,289 or WO 97/34775. Dedoes also seeks a declaratory judgment that one or more claims of the '516 patent are invalid under 35 U.S.C. § 112 for at least the reason that, on information and belief, one or more claims, when read in light of the patent's specification and prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.

**CLAIM IV - DECLARATORY JUDGMENT OF NON-INFRINGEMENT
AND INVALIDITY WITH RESPECT TO THE '326 PATENT**

47. Dedoes incorporates by reference the averments of Paragraphs 1 through 46 as though fully set forth herein.

48. Dedoes seeks a declaratory judgment that as to each claim of the '326 patent the use, sale, offer for sale, or importation of certain paint lid products, including certain ClicSeal paint lid products, by Dedoes has not infringed and will not infringe any claim directly, indirectly, literally, under the doctrine of equivalents or in any manner. For example, on information and belief, Dedoes alleges that the relevant accused devices do not infringe, literally or under the doctrine of equivalents, one or more limitations, as construed by this Court, of at least each independent claim of the '326 patent. Also, the accused devices do not contributorily infringe the '326 patent for at least the reason that said devices are each staple article or commodity of commerce suitable for substantial noninfringing use. Also, Dedoes did not have the requisite intent to induce infringement of the '326 patent.

49. Dedoes seeks a declaratory judgment that each claim of the '326 Patent is void and invalid for failure to comply with one or more requirements of 35 U.S.C. § 101, 102, 103 and/or 112.

50. In particular, Dedoes seeks a declaratory judgment that each claim of the '326 patent is invalid under 35 U.S.C. § 102 or 103 in light of prior art, including without limitation, at least U.S. Patent No. 2,154,581 alone, or in combination with French Patent Application No. 2 555 141 and/or other prior art references including, but not limited to, U.S. Patent Numbers 2,126,651, 2,257,370, 2,364,206, 4,750,648, 4,793,528, 5,020,700, 5,358,153, 5,622,289 or WO 97/34775. Dedoes also seeks a declaratory judgment that one or more claims of the '326 are invalid under 35 U.S.C. § 112 for at least the reason that, on information and belief, one or more claims, when read in light of the patent's specification and prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention.

WHEREFORE, Dedoes prays that:

1. X-Pert, and its officers, agents, employees, successors and assigns, and all persons or entities holding by, through, or under them and all those acting for them or in their behalf, be permanently enjoined from further infringement the '598 Patent.
2. X-Pert account for and pay to Plaintiff all damages sustained by Plaintiff as determined by the jury by reason of X-Pert's infringement of the 598 Patent.

3. This Court declare this case to be exceptional pursuant to 35 U.S.C. §285 and award Dedoes triple damages as determined by the jury together with Dedoes' attorney fees and costs associated with this action.

4. Declare that Dedoes paint lids, including the ClicSeal lids, do not directly or indirectly infringe any claim of any X-Pert Patent.

5. Declare each X-Pert Patent is invalid.

6. Award Dedoes its costs;

7. Dedoes be granted such other and further relief as this Court deems just and equitable.

Respectfully submitted,

s/ Douglas W. Sprinkle
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Date: April 7, 2015

JURY DEMAND

Dedoes demands a trial by jury on all issues so triable.

Respectfully submitted,

s/ Douglas W. Sprinkle
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