

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TAPCO INTERNATIONAL CORPORATION.,

Plaintiff,

vs.

ALPHA SYSTEMS INCORPORATED,

Defendant.

03-72444
Case No. 03-
Hon.

Complaint and
Demand for Jury trial
NANCY G. EDMUNDS

MAGISTRATE JUDGE CARLSON

HOWARD & HOWARD ATTORNEYS P.C.

By: Jeffrey A. Sadowski (P28163)

John P. Scuryneck (P54146)

Attorneys for Plaintiff

39400 Woodward Avenue, Ste. 101

Bloomfield Hills, MI 48304

(248) 645-1483

Fax: (248) 645-1568

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U.S. DIST. COURT
EAST DIST. MICH.
DETROIT

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Tapco International Corporation ("Tapco" or "Plaintiff") by its attorneys, hereby demands a jury trial and alleges upon knowledge as to its own acts and upon information and belief as to all other matters as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States. Tapco seeks a preliminary and permanent injunction to enjoin Alpha Systems Inc. ("Alpha" or "Defendant") from infringing Tapco's patents. Specifically, Defendant designs, manufactures, and markets, *inter alia*, certain custom length plastic shutters ("Alpha Shutters")

that infringe several of Tapco's patents. Tapco also seeks a preliminary and permanent injunction, as well as an award of damages, for Defendant's infringement of Tapco's rights.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§1331 and 1332 as there is a federal question, as well as diversity between the parties, and the matter in controversy exceeds, exclusive of interests and costs, the sum of Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars.

3. The cause of action for patent infringement arises under the Patent Laws of the United States, Title 35 U.S.C. §§101 and 271 and this Court has federal jurisdiction of this claim pursuant to §§1331, 1338, and 2201 et seq.

4. Jurisdiction over the Defendant comports with the United States Constitution and the long arm statute for the State of Michigan, §600.715 of Michigan Laws Annotated, because based on information and belief, Defendant transacts significant business activities in Michigan.

5. Venue is proper in this District pursuant to 28 U.S.C. §1391 because Defendant, a corporation, conducts business within this District, Defendant engaged in, and continues to engage in, acts of offering for sale, selling and/or distributing Alpha Shutters within this District, and Defendant's Alpha Shutters, to which this action relates are marketed and sold within this District.

THE PARTIES

6. Plaintiff, Tapco International Corporation ("Tapco") is a corporation of the State of Michigan with its principal place of business at 29797 Beck Road, Wixom, Michigan 48393. Tapco is engaged in the design, manufacture, distribution and sale of custom length plastic shutters ("Tapco Shutters").

7. Defendant, Alpha Systems, Inc. ("Alpha"), is a corporation of the State of Indiana with its principal place of business at 5120 Beck Drive, Elkhart, Indiana 46516. Defendant is engaged in the manufacture, distribution, sale, offer for sale and/or advertisement of Alpha Shutters in the United States and within this District.

FACTUAL BACKGROUND

8. Tapco designs and manufactures several types of custom length plastic shutters used in decorating the exteriors of buildings, including a louvered shutter ("Tapco Louvered Shutter") and a paneled shutter ("Tapco Panel Shutter").

PANELED SHUTTER

9. Tapco owns United States Patent No. 6,141,938, entitled "Modular Shutter Assembly Including a Die Cut Panel" ("the '938 patent"). (Attached hereto as Exhibit A is a true and correct copy of the '938 patent").

10. Tapco owns United States Patent No. 6,122,875, entitled "Custom Length Shutter Assembly" ("the '875 patent"). (Attached hereto as Exhibit B is a true and correct copy of the "875 patent").

11. Tapco owns United States Patent No. 5,704,182, entitled "Modular Shutter Assembly" ("the '182 patent"). (Attached hereto as Exhibit C is a true and correct copy of the "182 patent").

12. Tapco owns United States Patent No. 5,761,865, entitled "Component Shutter Panel Assembly" ("the '865 patent"). (Attached hereto as Exhibit D is a true and correct copy of the "865 patent").

13. Tapco owns United States Patent No. 5,946,873, entitled "Component Shutter Panel Assembly" ("the '873 patent"). (Attached hereto as Exhibit E is a true and correct copy of the "873 patent").

14. Upon information and belief, Defendant designs, manufactures, and markets the Alpha Paneled Shutters that infringe the '938 patent, the '875 patent, the '182 patent, the '865 patent and the '873 patent.

LOUVERED SHUTTER

15. Tapco owns United States Patent No. 5,782,052, entitled "Ornamental Shutter" ("the '052 patent"). (Attached hereto as Exhibit F is a true and correct copy of the '052 patent).

16. Upon information and belief, Defendant designs, manufactures, and markets the Alpha Louvered Shutters that infringe the '052 patent as well as the '865 patent.

17. By reason of Defendant's actions, Tapco has and will continue to suffer damage to its business, reputation and goodwill, and the loss of sales Tapco would have made, but for Defendant's acts. Unless restrained and enjoined, Defendant will continue to do the acts complained of herein causing Tapco irreparable harm.

CLAIM FOR PATENT INFRINGEMENT
(VIOLATION OF 35 U.S.C. §§ 101 AND 271)

18. Tapco repeats and re-alleges each and every allegation contained in paragraphs 1 through 17 of this Complaint as if fully set forth herein.

19. Defendant's willful and knowing unauthorized sale, manufacture, distribution, use and/or offer for sale of products that employ the subject matter of various claims of the '983 patent, the '875 patent, the '182 patent, the '865 patent, the '873 patent, and the '052 patent, violates Section 101 and 271 of Title 35 of the United States Code. As a result, Tapco is entitled

to injunctive relief pursuant to 35 U.S.C. §283, and is entitled to damages, profits, costs and attorneys' fees pursuant to 17 U.S.C. §§284 and 285.

20. Unless Defendant is enjoined from continuing the aforementioned acts, Tapco will continue to suffer irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Tapco prays for relief as follows:


- (a) That this Court find that Defendant is willfully and knowingly infringing the patents in suit;
- (b) That actual damages sustained by Tapco attributable to Defendant's unauthorized sale, manufacture, use and offer for sale of products that infringe the patents in suit be awarded and trebled;
- (c) That preliminary and permanent injunction issue against Defendant for its infringing activity;
- (d) That Plaintiff be awarded its costs of the action;
- (e) That this case be deemed exceptional under 35 U.S.C. §285 for the conduct of Defendant and that attorneys' fees be awarded to Tapco; and
- (f) Such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

TAPCO INTERNATIONAL CORPORATION, by and through its undersigned attorneys,
and, pursuant to F. R. Civ. P. 38, hereby demands a trial by jury on all claims triable by a jury.

Respectfully submitted,

HOWARD & HOWARD ATTORNEYS, P.C.

By: 
Jeffrey A. Sadowski (P28163)
John P. Scuryneck (P54126)
Attorneys for Plaintiff
39400 Woodward Avenue, Ste. 101
Bloomfield Hills, MI 48304
(248) 645-1483
Fax: (248) 645-1568

Dated: June 23, 2003

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

**SEE CASE FILE FOR
ADDITIONAL
DOCUMENTS OR PAGES
THAT WERE NOT
SCANNED**