

UNITED STATES DISTRICT COURT
for the
MIDDLE DISTRICT OF NORTH CAROLINA

CUSTOM GOLF CAR SUPPLY, INC.)
)
)
 Plaintiff,)
) Civil Action. No. 1:15-cv-320
 v.)
)
 NIVEL PARTS & MANUFACTURING)
 COMPANY, LLC; and)
 NIVEL HOLDINGS, LLC)
)
 Defendants.)
 _____)

COMPLAINT
(Jury Trial Demanded)

COMES NOW, Plaintiff Custom Golf Car Supply, Inc. (hereinafter “Plaintiff” and/or “Custom”) and files this Complaint for a Declaratory Judgment against Defendants Nivel Parts & Manufacturing Company, LLC and Nivel Holdings, LLC (hereinafter collectively “Defendants” or “Nivel”), and alleges the following:

JURISDICTION AND VENUE

1. This action is instituted under 28 U.S.C. § 2201 and 28 U.S.C. § 2202 for a Declaratory Judgment of invalidity of U.S. Patent No. 8,668,242, the rights to which have been alleged to be owned by Defendants.

2. This action arises from an actual and justiciable controversy between Plaintiff and Defendants.

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, 28 U.S.C. §1332, 28 U.S.C. § 1338, 28 U.S.C. § 2201, and 28 U.S.C. § 2202.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

5. Defendants have sufficient contacts with North Carolina to satisfy this Court's exercise of personal jurisdiction over them.

PARTIES

6. Plaintiff Custom Golf Car Supply, Inc. is a corporation organized and existing under the laws of the State of North Carolina, and has a principal place of business at 1735 Heilig Road, Salisbury, North Carolina 28146.

7. Upon information and belief, Defendant Nivel Parts & Manufacturing Company, LLC is a limited liability company organized and existing under the laws of the State of Delaware, and has a principal place of business at 3510 Port Jacksonville Pkwy., Jacksonville, Florida 32226. The registered agent for service of process for Defendant Nivel Parts & Manufacturing Company, LLC is Corporation Service Company 2711 Centerville Rd., Suite 400, Wilmington, Delaware 19808.

8. Upon information and belief, Defendant Nivel Holdings, LLC is a limited liability company organized and existing under the laws of the State of Delaware, and has a principal place of business at 3510 Port Jacksonville Pkwy., Jacksonville, Florida 32226. The registered agent for service of process for Defendant Nivel Holdings, LLC is Corporation Service Company 2711 Centerville Rd., Suite 400, Wilmington, Delaware 19808.

FACTS

9. Plaintiff Custom Golf Car Supply, Inc. (“Custom”) produces and sells a variety of accessories and parts for golf cars, such as custom golf car body sets, rear seat kits, custom cushions, golf car tops, windshields, cargo beds and golf car enclosures.

10. On or about April 2, 2015, an attorney representing Defendants Nivel Parts & Manufacturing Company, LLC and Nivel Holdings, LLC (hereinafter collectively “Defendants” or “Nivel”) sent, via e-mail, a cease and desist letter to Custom, accusing Custom of infringing U.S. Patent No. 8,662,242 (“the ‘242 patent”), and demanding that Custom immediately cease and desist manufacturing, importing, selling, or offering for sale Custom’s allegedly infringing products. A copy of the letter is attached to this Complaint as Exhibit 1, and is incorporated herein. The letter specifically alleges that Custom’s (a) “Kwick-Track system”, (b) “any and all golf carts and golf cart tops that incorporate, or are configured to incorporate, the Kwick-Track system”, and (c) “any and all golf cart enclosures and golf cart valances configured to attach to the Kwick-Track rails” infringe the ‘242 patent.

11. According to the cease and desist letter dated April 2, 2015 (Exhibit 1 to this Complaint), Defendant Nivel Parts & Manufacturing Company, LLC’s patent rights include the ‘242 patent.

12. Also according to the cease and desist letter dated April 2, 2015 (Exhibit 1 to this Complaint), the ‘242 patent has been assigned to Defendant Nivel Holdings, LLC.

13. According to the public records of the U.S. Patent and Trademark Office, rights in the ‘242 patent were assigned to Defendant Nivel Holdings, LLC by way of an

assignment executed by inventor Francis A. Sorbik, recorded in the U.S. Patent and Trademark Office on October 27, 2011 at Reel/Frame 27131-393.

14. The cease and desist letter dated April 2, 2015 (Exhibit 1 to this Complaint) evidences the existence of an actual and justiciable case of controversy between Plaintiff and Defendants as to the validity and enforceability of the '242 patent within the meaning of 28 U.S.C. §2201.

DECLARATION OF INVALIDITY OF PATENT NO. 8,668,242

15. Paragraphs 1- 14 are incorporated by reference herein as though set forth in their entirety.

16. Plaintiff seeks pursuant to 28 U.S.C. §§ 2201 and 2202 a Declaratory Judgment of invalidity of all claims of U.S. Patent No. 8,668,242 (“the ‘242 patent”).

17. All claims of the ‘242 patent are invalid and/or unenforceable for at least each of the reasons recited in paragraphs 18-24 below.

18. All claims of the ‘242 patent are invalid in view of prior art pursuant to 35 U.S.C. §102 and/or 35 U.S.C. §103.

19. The invention claimed in the ‘242 patent was in public use and/or on sale in the United States, more than one year prior to the date of the application for patent in the United States.

20. Custom’s Kwick-Track system, which Defendants allege infringe the ‘242 patent, was on sale and/or in public use in the United States at least as early as August 6, 2010, more than one year prior to the date of the application for the ‘242 patent.

21. The invention claimed in the '242 patent was described in a printed publication more than one year prior to the date of the application for patent in the United States.

22. Custom's Kwick-Track system, which Defendants allege infringe the '242 patent, was described in a printed publication more than one year prior to the date of the application for the '242 patent.

23. The invention claimed in the '242 patent was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for patent.

24. Custom's Kwick-Track system, which Defendants allege infringe the '242 patent, was known and used by others in this country before the invention thereof by the applicant of the '242 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Custom Golf Car Supply, Inc. respectfully asks:

- A. That this Court enter a Declaratory Judgment holding that all claims of Patent No. 8,668,242 are invalid;
- B. That this Court enter a Declaratory Judgment holding that Patent No. 8,668,242 is not infringed by Plaintiff Custom Golf Car Supply, Inc.;
- C. That this Court award Custom Golf Car Supply, Inc. interest, costs, reasonable attorneys' fees and such further relief that this Court deems just and equitable;
- D. That this Court order Defendants to pay Plaintiff its reasonable taxable costs in a sum and manner deemed appropriate by this Court; and

E. That factual issues so triable be tried by jury.

Respectfully submitted,

/s/ Stephen S. Ashley, Jr.

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