

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

Vaxcel International Co., Ltd.,

Plaintiff,

and

North Tech International Co., Ltd.,

Counterclaimant in Intervention,

v.

HeathCo LLC,
Lowe's Companies, Inc., and
Lowe's Home Centers, LLC,

Defendants.

Civil Action No. 1:15-cv-00696

The Honorable John R. Blakey

Magistrate Judge Mary M. Rowland

**THIRD AMENDED COMPLAINT FOR PATENT
INFRINGEMENT AND DEMAND FOR JURY TRIAL**

Plaintiff Vaxcel International Co., Ltd., ("Vaxcel"), for its third amended complaint against Defendants HeathCo LLC, Lowe's Companies, Inc., and Lowe's Home Centers, LLC (collectively "Defendants"), alleges as follows:

PARTIES

1. Plaintiff Vaxcel International Co., Ltd. is an Illinois Corporation with its principal place of business located at 121 E. North Avenue, Carol Stream, Illinois 60188.

2. Defendant HeathCo LLC ("HeathCo") is a Delaware Limited Liability Company with its principal place of business located at 2445 Nashville Road, Bowling Green, Kentucky 42101.

3. Defendant Lowe's Companies, Inc. is a North Carolina corporation with its principal place of business at 1000 Lowe's Blvd., Mooresville, North Carolina 28117.

4. Defendant Lowe's Home Centers, LLC is a North Carolina Limited Liability

Company with its principal place of business at 1605 Curtis Bridge Rd., Wilkesboro, North Carolina 28697.

JURISDICTION AND VENUE

5. This is an action for patent infringement arising under the acts of Congress relating to patents, namely the Patent Laws of the United States as set forth in 35 U.S.C. §§ 1 *et seq.*

6. This Court has federal subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1332(a)(1), 1332(c)(1), and 1338(a).

7. Defendants regularly conduct business in this Judicial District. Defendants market and supply infringing products to local retailers and consumers in this Judicial District. *See, e.g.*, Exs. A-F. Therefore, this Court has general jurisdiction over Defendants.

8. Defendants have committed and continue to commit acts of patent infringement in this Judicial District. Defendants have, at a minimum, directly and/or through intermediaries, including subsidiaries, distributors, sales agents, and others, sold and/or offered for sale in this Judicial District infringing products, as alleged in further detail below. Therefore, this Court has specific jurisdiction over Defendants.

9. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(a), 1391(b), 1391(c), and 1400(b), including without limitation because Defendants advertise, market, sell, and/or offer to sell products, including infringing products, in this Judicial District. In addition, Defendant HeathCo is a subsidiary of Duchossois Industries, Inc., a holding company headquartered in this Judicial District at 845 Larch Avenue, Elmhurst, Illinois 60126.

COUNT I
PATENT INFRINGEMENT

10. Plaintiff Vaxcel repeats and realleges the allegations contained in paragraphs 1 through 9 above, inclusive, as if fully repeated and restated herein.

11. Plaintiff Vaxcel is the owner of all rights, title, and interest in United States Letters Patent Number 8,310,163 (“the ‘163 patent”), titled “Microcontroller-Based Lighting Control System and Method for Lighting Control,” which was duly and legally issued on November 13, 2012. A true and correct copy of the ‘163 patent is attached as Exhibit G.

12. Plaintiff Vaxcel has never licensed any Defendant under the ‘163 patent and, except as set forth in paragraph 13, Plaintiff Vaxcel has not otherwise authorized any Defendant to practice any part of the ‘163 patent.

13. Plaintiff Vaxcel is providing Defendants HeathCo LLC, Lowe’s Home Centers, LLC, and Lowe’s Companies, Inc. with a covenant not to sue any of said Defendants for infringement of any of claims 1-6 and 8-19 of the ‘163 patent, as issued on November 13, 2012. The term of the covenant not to sue extends to the expiration of the ‘163 patent.

14. Defendant HeathCo is the manufacturer and marketer of Heath/Zenith branded products. Exhibit H.

15. Defendants Lowe’s Home Centers, LLC and Lowe’s Companies, Inc. (collectively “the Lowe’s Defendants”) are distributors, sellers, and marketers of such Heath/Zenith branded products, as well as LED lamps for use therewith. Exhibits E-F.

16. On information and belief, Defendants have directly infringed and continue to directly infringe, either literally or under the doctrine of equivalents, claim 7 of the ‘163 patent by making, using, selling, offering to sell, or importing, without license or authority, Defendant HeathCo’s suite of motion-activated security lighting products, including at least HeathCo

products that correspond to Heath/Zenith branded model numbers: HZ-4135-OR, HZ-4135-BK, HZ-5318-WH, HZ-5318-BZ, SH-5105-WH, and SH-5105-BZ, without Plaintiff Vaxcel's authorization, in violation of 35 U.S.C. § 271(a). *See* Exhibits A-F, I-L.

17. Defendants have and continue to promote, advertise, and instruct customers and potential customers about Heath/Zenith branded products and how to use Heath/Zenith branded products, including infringing uses. Defendants' promotion, advertising, and instruction efforts include, at a minimum, maintenance of the website www.heath-zenith.com, maintenance of the website www.lowes.com, the production and distribution of instruction manuals and other indicia included within or printed on the packaging of Heath/Zenith branded products. *See* Exhibits A-F, I-M. Defendants engaged in these acts with the actual intent to cause the acts which it knew or should have known would induce actual infringement.

18. Plaintiff Vaxcel met with representatives of third party Home Depot on May 9, 2014 regarding Defendant HeathCo's infringement of the '163 patent. On June 18, 2014, Home Depot's Associate General Counsel Candace N. Rodriguez sent a letter to Plaintiff Vaxcel indicating that Home Depot had forwarded Plaintiff Vaxcel's statements regarding infringement to Defendant HeathCo and that HeathCo had responded that its products do not infringe. Therefore, Defendant HeathCo had actual knowledge of the '163 patent at least as of June 18, 2014. To the extent that facts learned in discovery show that Defendant HeathCo had actual knowledge of the '163 patent as of a date earlier than June 18, 2014 and/or show that Defendant HeathCo's infringement of claim 7 of the '163 patent is or has been willful, Plaintiff Vaxcel reserves the right to request such findings at the time of trial.

19. Plaintiff Vaxcel provided Megan Hinson, a representative of the Lowe's Defendants, a copy of the Complaint (Dkt. 1) on April 22, 2015 and indicated that two of the

Lowe's Defendants' skus were cited therein. Prior to this correspondence, Plaintiff Vaxcel had previously identified the '163 patent to the Lowe's Defendants' representatives at least a year ago. Therefore, the Lowe's Defendants had actual knowledge of the '163 patent at least as of April 22, 2014. To the extent that facts learned in discovery show that the Lowe's Defendants had actual knowledge of the '163 patent as of a date earlier than April 22, 2014 and/or show that the Lowe's Defendants' infringement of claim 7 of the '163 patent is or has been willful, Plaintiff Vaxcel reserves the right to request such findings at the time of trial.

20. Defendants' actions have and continue to constitute active inducement of claim 7 of the '163 patent in violation of 35 U.S.C. §§ 271(b).

21. As a result of Defendants' infringement of claim 7 of the '163 patent, Plaintiff Vaxcel has suffered monetary damages in an amount not yet determined, and will continue to suffer damages in the future unless Defendants' infringing activities are enjoined by this Court.

22. Defendants' wrongful acts have damaged and will continue to damage Plaintiffs irreparably, and Plaintiffs have no adequate remedy at law for those wrongs and injuries. In addition to its actual damages, Plaintiff Vaxcel is entitled to a permanent injunction restraining and enjoining Defendants and their respective agents, servants and employees, and all persons acting thereunder, in concert with, or on its behalf, from infringing claim 7 of the '163 patent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Vaxcel respectfully requests that this Court enter:

A. A judgment in favor of Plaintiff Vaxcel that Defendants have been and are infringing claim 7 of the '163 patent pursuant to 35 U.S.C. §§ 271(a) and 271(b);

B. A permanent injunction enjoining Defendants and their respective officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents, and

all others acting in concert or privity with any of them from infringing or inducing the infringement of claim 7 of the '163 patent;

C. An award of damages incurred by Plaintiff Vaxcel as a result of Defendants' infringement of claim 7 of the '163 Patent as provided under 35 U.S.C. § 284;

D. An assessment of costs, including reasonable attorney fees pursuant to 35 U.S.C. § 285, and prejudgment interest against Defendants; and

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

JURY TRIAL DEMANDED

Plaintiff Vaxcel hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

Dated: December 9, 2015

/s/ Cole B. Richter

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