

HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

G3 Genuine Guide Gear Inc., a Canadian
corporation

Plaintiff,

v.

Marker Deutschland GmbH, a German
company, and Marker Volkl USA, Inc., a
Florida corporation

Defendant.

CIVIL ACTION NO. 2:15-CV-00561-TSZ

AMENDED COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff G3 Genuine Guide Gear Inc. (“G3” or “Plaintiff”), for its Amended Complaint against Defendants Marker Deutschland GmbH (“Marker DE”) and Marker Volkl USA, Inc. (“Marker USA”) (collectively “the Defendants”), states and alleges as follows:

PARTIES

1. G3 is a Canadian corporation with its headquarters at 200 Donaghy Avenue, North Vancouver, British Columbia, Canada, V7P 2L5.

2. Marker Deutschland GmbH is a German company with its principal place of business at Dr.-Gotthilf-Näher-Straße 6 and 12, Penzberg 82377, Germany.

3. Marker Volkl USA, Inc. is a Florida corporation with its principal place of business at 112 Etna Road, Lebanon, New Hampshire 03766.

JURISDICTION AND VENUE

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2 4. This is an action for patent infringement arising under the patent laws of the
3 United States, Title 35 of the United States Code. This Court has subject matter jurisdiction over
4 this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5 5. Defendants are subject to personal jurisdiction in Washington State because, on
6 information and belief, Defendants regularly transact business in this judicial district by, among
7 other things, offering and selling Defendants' products to customers, business affiliates, and/or
8 partners located in this judicial district and/or causing Defendants' products to be sold or offered
9 for sale to customers, business affiliates, and/or partners located in this judicial district. In
10 addition, Defendants have committed acts of infringement of one or more of the claims of United
11 States Patent No. 8,746,728 in this judicial district.

12 6. On information and belief, Defendants regularly and systematically do business
13 with residents in Washington State, and in this judicial district, including, but not limited to, (a)
14 advertising the infringing products to residents in Washington through Marker DE's website at
15 <http://marker.de/> and Marker USA's website at <http://markerusa.com>; (b) allowing Washington
16 residents to provide contact information and solicit information on Defendants' websites; (c)
17 directing customers to numerous authorized dealers, distributors, and retailers in Washington
18 such as REI, Pro Ski Services, Marmot (Bellevue), EVO Gear, and The Sports Authority, among
19 others, through Marker USA's website; (d) offering for sale, selling, or making the infringing
20 products available for sale in the State of Washington through the stream of commerce through
21 one or more central shipping points, and/or (e) attending and publicly displaying the infringing
22 products in Washington state at tradeshow such as the WWSRA Northwest On-Snow Demo,
23 which was held on February 18-19, 2014 in Mission Ridge, Washington.

24 7. In the alternative, jurisdiction over Marker DE is proper in the United States
25 District Court for the Western District of Washington under Federal Rule of Civil Procedure

1 4(k)(2). The cause of action of this Complaint arises under federal law. If the Court finds that
2 Marker DE is not subject to the jurisdiction of the courts of general jurisdiction of any particular
3 state, on information and belief, Marker DE has at least minimum contacts with the United States
4 because, among other things, Marker DE has (a) imported, or caused to be imported, into the
5 United States and sold, or caused to be sold, its products throughout the United States; (b)
6 advertised its products to residents in the United States through its website at <http://marker.de/>;
7 (c) allowed United States residents to provide contact information and solicit information on
8 Marker DE's website; and/or (d) attended and publicly displayed its infringing products in the
9 United States at various trade shows.

10 8. Venue in this district is proper pursuant to 28 U.S.C. §§ 1391(b) and 1400(b)
11 because Defendants are subject to personal jurisdiction in this district and have committed acts of
12 infringement in this district.

13 **FACTUAL BACKGROUND**

14 **The Patent-in-Suit**

15 9. On June 10, 2014, the United States Patent and Trademark Office duly and
16 lawfully issued United States Patent No. 8,746,728 B2 ("the '728 Patent" or "the Patent-in-Suit")
17 entitled "Heel Unit for Alpine Touring Binding." The patent is attached as Exhibit A.

18 10. G3 is the owner by assignment of the '728 Patent.

19 **Defendants' Infringing Products**

20 11. G3 incorporates by reference in its entirety Plaintiff's Disclosure of Asserted
21 Claims and Infringement Contentions ("Contentions"), originally served on Marker DE on
22 November 5, 2015. This document identifies each of the asserted claims (1, 2, 11-13, 18, 19, 29,
23 32, 33, 35, 37, 38, and 39) and accused products and explains in detail how the accused products
24 meet each element of each of the asserted claims. The Contentions are attached hereto as Exhibit
25 B.

1 12. On information and belief, Defendants are in the business of, *inter alia*, making,
2 having made, and/or selling alpine touring bindings and products for importation into the United
3 States. These products include the heel units which are claimed in at least claims 1, 2, 11-13, 18,
4 19, 29, 32, 33, 35, 37, 38, and 39 of the '728 Patent, either literally or under the doctrine of
5 equivalents. The accused products include, but are not limited to, the Marker Kingpin 10
6 bindings, the Marker Kingpin 10 Demo bindings, and the Marker Kingpin 13 bindings
7 (collectively "the Marker Kingpin bindings").

8 13. On information and belief, Defendants use, sell, offer for sale, and/or import into
9 the United States, the Marker Kingpin bindings, and/or cause the Marker Kingpin bindings to be
10 made, used, sold, offered for sale, and/or imported into the United States.

11 14. In response to G3's First Set of Interrogatories to Marker DE, Marker DE
12 admitted that "Marker Volkl USA, Inc. operates within the United States, and is the entity that
13 imports and sells the accused Kingpin bindings in the United States, via independent sales
14 representatives and retailers."

15 15. On information and belief, Marker DE causes, directs, supervises, enables, and/or
16 induces Marker USA to import and sell the Marker Kingpin bindings in the United States.

17 16. The Marker Kingpin bindings include, but are not limited to, a heel unit, and
18 consist of at least the following:

- 19 a. a component which slides relative to the base of the binding;
- 20 b. a component that attaches to the heel of footwear when in ski mode;
- 21 c. a component that detaches from the heel of footwear when in walk mode;
- 22 d. a component that acts as a brake; and
- 23 e. a component that allows switching between ski mode and walk mode.

24 17. According to Marker DE's website,¹ "[t]op walking comfort, simple operation
25

¹ <http://marker.de/kingpin>.

1 and a quick switch from walk to ski mode make the new KINGPIN a majestic partner. Unlike
2 previous PinTech bindings, classic tourers will appreciate the added fun that the KINGPIN
3 brings to the descent, with power transmission and ski control that leave no wish unfulfilled.”
4 On information and belief, Defendants sell the Marker Kingpin bindings throughout the United
5 States.

6 18. Marker DE’s website includes pages describing components of the heel unit and
7 functionality of the Marker Kingpin bindings. For instance, the website states that the Marker
8 Kingpin bindings allow “conversion [sic] from walk mode to ski mode in only one gesture.”² “It
9 takes just one step to switch from walk to ski mode: Simply flip a lever, push down on the heel
10 and you’re good to go.”³ Further, the Marker Kingpin bindings have brakes that “automatically
11 lock into place when in walk mode, and immediately reactivate when the binding is switched
12 into ski mode.”⁴

13 19. Marker DE’s website also has numerous videos describing the functionality of the
14 Marker Kingpin bindings, including demonstrations of how the footwear attaches and releases
15 from the heel binding changing the bindings from ski mode, where the upper portion of the heel
16 binding connects to the footwear heel, and walk mode, where the upper portion of the heel
17 disconnects from the footwear heel by moving away from the footwear heel.⁵

18 20. The Marker Kingpin bindings meet all of the limitations of the asserted claims of
19 the ’728 Patent either literally or under the doctrine of equivalents, and thus infringe at least one
20 claim of the ’728 Patent.

21 **Defendants’ Knowledge of G3’s Patent**

22 21. On information and belief, Defendants have had actual knowledge of the ’728
23 Patent and of Defendants’ infringement of that patent. G3 contacted Marker DE prior to the

24 ² *Id.*

25 ³ *Id.*

⁴ *Id.*

⁵ <http://marker.de/videos.html>.

1 filing of this Complaint. This contact constituted notice to Defendants of the '728 Patent and
2 that the Marker Kingpin bindings infringe at least one of the claims of that patent.

3 22. Despite the fact that Defendants have had actual knowledge of Plaintiff's patent
4 rights, Defendants have acted deliberately and in disregard of the '728 Patent, and with objective
5 recklessness, by infringing the '728 Patent, through Defendants' continued manufacture, use,
6 sale, or offer for sale in the United States of the Marker Kingpin bindings.

7 23. Defendants' infringement of the '728 Patent is willful and deliberate.

8 **COUNT I – INFRINGEMENT OF THE '728 PATENT**

9 24. G3 reasserts and incorporates herein by reference the allegations set forth in
10 paragraph nos. 1 through 23 as though fully set forth herein.

11 25. Defendants have infringed one or more claims of the '728 Patent, either literally
12 or under the doctrine of equivalents, by making, using, selling, offering to sell, and/or importing
13 the Marker Kingpin bindings into the United States.

14 26. Also, Defendants have indirectly infringed one or more claims of the '728 Patent,
15 either literally or under the doctrine of equivalents, by actively inducing infringement of those
16 claims by others. On information and belief, one or more claims of the '728 Patent are directly
17 infringed when an individual uses the Marker Kingpin bindings and/or when Defendants or a
18 subsidiary, distributor, affiliate, or retailer of Defendants sells or offers to sell the Marker
19 Kingpin bindings or imports the Marker Kingpin bindings into the United States.

20 27. On information and belief, Defendants' active inducement of infringement has
21 occurred with actual knowledge of the '728 Patent since prior to the filing of this Complaint
22 when Plaintiff notified Marker that the Marker Kingpin bindings infringed the '728 Patent.

23 28. On information and belief, Defendants' active inducement has occurred with the
24 specific intent of encouraging others to infringe the '728 Patent as demonstrated by, *inter alia*,
25 promoting and advertising the Marker Kingpin bindings, and instructing users to use the binding,

1 in a manner that directly infringes the '728 Patent. In addition, Marker DE has actively induced
2 infringement of the '728 patent by causing Marker USA to sell, offer for sale, or import into the
3 United States the Marker Kingpin bindings, and Marker DE had specific intent that such acts
4 would constitute infringement.

5 29. On information and belief, Defendants' infringement and/or inducement of
6 infringement of the '728 Patent have been willful and deliberate, are continuing, and will
7 continue unless enjoined by the Court.

8 30. G3 has been damaged by Defendants' infringing activities and will be injured
9 irreparably unless this Court enjoins such activities.

10 **RELIEF REQUESTED**

11 **WHEREFORE**, Plaintiff G3 Genuine Guide Gear, Inc., respectfully requests the following
12 relief:

- 13 a. A judgment that Defendants have infringed the '728 Patent;
- 14 b. A judgment permanently enjoining Defendants from making, using, selling,
15 offering to sell, or importing the infringing products into the United States and causing the
16 infringing products to be made, used, sold, offered for sale, or imported into the United States;
- 17 c. A judgment awarding damages against Defendants for their infringing activities;
- 18 d. A judgment declaring the case exceptional and awards G3 treble damages,
19 attorneys' fees, costs and expenses in this action pursuant to 35 U.S.C. §§ 284 and 285 because
20 Defendants' infringing activities have been willful and deliberate;
- 21 e. A judgment awarding pre- and post-judgment interest provided by law; and
- 22 f. Such further relief as is deemed just and equitable.

23 **JURY DEMAND**

24 Plaintiff hereby demands a trial by jury as to all counts so triable.
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1 DATED this 18th day of December, 2015

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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2015, I caused to be electronically filed the foregoing **AMENDED COMPLAINT** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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