

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
NORTHEASTERN DIVISION**

JT&O TECHNOLOGIES LLC

Plaintiff

v

CONTINENTAL TECHNOLOGIES, INC.
D/B/A EXTREME OUTDOOR PRODUCTS;
DOUBLE DRAGON INTERNATIONAL,
INC. D/B/A DDI, INC.; AND DICK'S
SPORTING GOODS, INC.,

Defendants

Civil Action No. 2:15-cv-264 Greer/Corker

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, JT&O Technologies LLC, for its Complaint against Defendants, Continental Technologies, Inc. d/b/a Extreme Outdoor Products and XOP; Dragon International, Inc. d/b/a DDI, Inc.; and Dick's Sporting Goods, Inc., alleges as follows:

INTRODUCTION

1. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code.

THE PARTIES

2. Plaintiff, JT&O Technologies LLC (hereinafter "JT&O") is a limited liability company having a place of business at 418 Christian Bend Road, Church Hill, Tennessee 37642.

3. On information and belief, Defendant Continental Technologies, Inc. d/b/a Extreme Outdoor Products and XOP (“XOP”) is an Iowa corporation with a principal place of business at 7425 Chaveneile Road, Dubuque, Iowa 52002. On information and belief, XOP’s president was Mr. J.B. Priest.

4. On information and belief, XOP operates the national website and store at <http://www.xopoutdoors.com/store>.

5. On information and belief, Defendant Double Dragon International, Inc. d/b/a DDI, Inc., (“DDI”) is an Iowa corporation with a principal place of business at 7425 Chaveneile Road, Dubuque, Iowa 52002. On information and belief, DDI’s president is Mr. J.B. Priest.

6. On information and belief, Defendant Dick’s Sporting Goods, Inc. (“Dick’s”) is a Delaware corporation with a principal place of business at 300 Industry Drive RIDC Park West, Pittsburgh, Pennsylvania 15275.

7. On information and belief, Defendant does business as “Dick’s” and operates the national website and store at <http://www.dickssportinggoods.com>.

8. Defendants XOP, DDI, and Dick’s are collectively referred to herein as “Defendants.”

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over all causes of action set forth herein pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, Title 35, United States Code, including 35 U.S.C. §271 *et seq.*

10. This Court has personal jurisdiction over Defendants as: (i) Defendants maintain regular and systematic business contacts with the State of Tennessee and within this judicial district and division; (ii) Defendants purposely, regularly, and continuously conduct business in the State of Tennessee and within this judicial district and division; (iii) Defendants purposefully direct their activities at residents of the State of Tennessee; (iv) the cause of action set forth herein arises out of or relates to the Defendants' activities in the State of Tennessee; (v) Defendants purposely place their products into the stream of commerce knowing that their products will enter the State of Tennessee and be purchased by residents of the State of Tennessee; and (vi) the exercise of jurisdiction over Defendants will not offend the traditional notions of fair play and substantial justice.

11. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §1331, §1338(a), §1391, and §1400(b).

COUNT ONE: PATENT INFRINGEMENT
(U.S. Patent No. 6,662,903)

12. JT&O realleges and incorporates herein the preceding allegations of this Complaint as if fully set forth herein.

13. On December 16, 2003, the United States Patent and Trademark Office duly and legally issued United States Patent No. 6,662,903, entitled "Tree Stand And Climbing Devices." A true and correct copy of U.S. Patent No. 6,662,903 (hereinafter the "'903 Patent") is attached hereto as Exhibit "A."

14 The '903 Patent is valid and enforceable.

15. The '903 Patent has been valid and enforceable since its issuance on December 16, 2003.

16. The '903 Patent temporarily lapsed on December 16, 2011. The United States Patent and Trademark Office, however, reinstated the '903 Patent on October 16, 2014. *See* Exhibit "B."

17. JT&O is the owner, by assignment, of all right, title, and interest in and to U.S. Patent No. 6,662,903, including the right to bring suit for past, present, and future patent infringement, and to collect past, present, and future damages.

18. Defendants have in the past and/or continue to infringe at least claim 1 of the '903 Patent in violation of 35 U.S.C. §§271 (a), (b), and/or (c).

19. Defendants' direct infringing acts include, but are not necessarily limited to, Defendants' importation, manufacture, use, offering for sale, and/or sale of tree stands known as climber tree stands.

20. Defendants' infringing tree stands comprise a platform.

21. Defendants' infringing tree stands comprise a locking device.

22. Defendants' infringing tree stands comprise a belt comprising teeth spaced along the length of the belt.

23. Defendant DDI's infringement first began no later than sometime in 2009 and continued through 2010 before the '903 Patent temporarily lapsed on December 16, 2011. *See, e.g.,* Exhibit "C," Exhibit "D," Exhibit "E," and Exhibit "H."

24. On information and belief, in 2010, Defendant DDI's infringing tree stands included, but are not necessarily limited to, tree stand model numbers LW-HCC, LW-HCSSO, LW-SCC, LW-

WSCC, and LW-WSCSO.

25. Defendant DDI made, used, and/or sold infringing tree stands that were made in 2010 (including but not necessarily limited to tree stand model numbers LW-HCC, LW-HCSSO, LW-SCC, LW-WSCC, and LW-WSCSO), that on information and belief were subsequently sold and/or purchased sometime in and/or between 2011 and 2014 as tree stand model numbers XPS-C, XPS-SC, and XPS-WC.

26. On information and belief, Defendant DDI continued its infringing conduct by selling the infringing tree stands to Defendant XOP sometime in and/or between 2011 and 2014 as at least tree stand model numbers XPS-C, XPS-SC, and XPS-WC.

27. On information and belief, Defendant DDI and/or Defendant XOP continued their infringing conduct during the temporary lapse period and after the '903 Patent was reinstated on December 16, 2014 by making, using, offering for sale, and selling tree stand model numbers DX-C, DX-SC, DX-WC, XOP-TS, and XOP-PH.

28. While Defendant DDI was developing another climber tree stand in December 2012, Defendant DDI asked Plaintiff JT&O for a license to the '903 Patent.

29. Defendant DDI did not first begin its infringement of the '903 Patent during the temporary lapse period.

30. Defendant DDI did not rely on the temporary lapse of the '903 Patent before it first began to infringe the '903 Patent.

31. Defendant DDI's patrons and customers also directly infringe at least claim 1 of the '903 Patent.

32. Plaintiff JT&O has not authorized Defendant DDI to legally practice any claim of the '903 Patent.

33. Defendant DDI is not, and never has been, licensed to practice any claim of the '903 Patent.

34. On information and belief, none of Defendant DDI's tree stands are marked with the '903 Patent number.

35. JT&O has not been paid an appropriate royalty for any of Defendant DDI's tree stands.

36. On information and belief, Defendant XOP's infringement first began in 2010 when its then President, Mr. J.B. Priest, purchased at least tree stand model numbers LW-HCC, LW-HCSSO, LW-SCC, LW-WSCC, and LW-WSCSO from Defendant DDI sometime between 2011 and 2014. Defendant XOP continued its infringement when Defendant XOP subsequently sold the tree stands it purchased from Defendant DDI as tree stand model numbers XPS-C, XPS-SC, and XPS-WC.

37. Defendant XOP also continued its infringement by offering to sell and selling additional tree stands, including but not necessarily limited to the representative tree stands on Defendant XOP's national website and store. *See* Exhibit "F."

38. Defendant XOP did not first begin its infringement of the '903 Patent during the temporary lapse period.

39. Defendant XOP did not rely on the temporary lapse of the '903 Patent before it first began to infringe the '903 Patent.

40. Defendant XOP's patrons and customers also directly infringe at least claim 1 of the '903 Patent.

41. Plaintiff JT&O has not authorized Defendant XOP to legally practice any claim of the '903 Patent.

42. Defendant XOP is not, and never has been, licensed to practice any claim of the '903 Patent.

43. On information and belief, none of Defendant XOP's tree stands are marked with the '903 Patent number.

44. JT&O has not been paid an appropriate royalty for any of Defendant XOP's tree stands.

45. On information and belief, Defendant Dick's infringement first began during the lapse period when it purchased infringing tree stands from Defendant XOP.

46. As Defendant Dick's did not rely on the temporary lapse of the '903 Patent before it first began its infringement of the '903 Patent, Dick's infringed the '903 Patent during the lapse period. *See, e.g., Fonar Corp. v. General Elec. Co.*, 107 F.3d 1543, 1554 (Fed. Cir. 1997) (35 USC § 41(c)(2) "was intended to protect the rights of those who, in reliance on the lapse, first began using the claimed invention or who first took steps to begin using it during the lapse period.") and *Aero Products Int'l, Inc. v. Intex Recreation Corp.*, No. 02 C 2590, 2003 WL 22723017 at * 7-8 (N.D. Ill. Nov. 18, 2003) (Finding that intervening rights requires that the infringer "detrimentally relied on [the patentee's] erroneous maintenance payment.").

47. Defendant Dick's infringement of the '903 Patent continued after the '903 Patent

was reinstated by the United States Patent and Trademark Office on October 16, 2014.

48. Information from Defendant Dick's national website and store, which offers for sale representative examples of Defendant Dick's infringing tree stands, includes but is not necessarily limited to the infringing tree stands shown in Exhibit "G."

49. JT&O provided Defendant Dick's with written notice of the '903 Patent no later than on or about the filing date of the original Complaint, September 28, 2015. At the same time, JT&O also told Defendant Dick's that Defendant Dick's had in the past and was continuing to infringe the '903 Patent. As a result, Defendant Dick's had notice of its alleged infringement of the '903 Patent.

50. Defendant Dick's patrons and customers also directly infringe at least claim 1 of the '903 Patent.

51. Plaintiff JT&O has not authorized Defendant Dick's to legally practice any claim of the '903 Patent.

52. Defendant Dick's is not, and never has been, licensed to practice any claim of the '903 Patent.

53. On information and belief, none of Defendant Dick's tree stands are marked with the '903 Patent number.

54. JT&O has not been paid an appropriate royalty for any of Defendant Dick's tree stands.

55. Defendants DDI and/or XOP have in the past and continue to indirectly infringe at least claim 1 of the '903 Patent in violation of 35 U.S.C. § 271(b) by actively, knowingly, and

intentionally inducing direct infringement by other persons, including patrons, customers, and end users, by offering for sale and/or selling Defendants' tree stands in the United States without authority or license from JT&O and in a manner understood and intended to infringe JT&O's '903 Patent.

56. Defendant DDI and/or XOP indirectly infringed at least claim 1 of the '903 Patent in violation of 35 U.S.C. § 271(b) by importing, making, using, offering for sale, and selling specially designed replacements belts for climber tree stands, including but not limited to belt model numbers XOP-TB22-1.4-YT and XOP-TB22-1.56-YT.

57. Defendant DDI and/or XOP indirectly infringed at least claim 1 of the '903 Patent in violation of 35 U.S.C. § 271(b) by importing, making, using, offering for sale, and selling specially designed climber tree stands without a belt knowing and intending that a belt will be added, including but not limited to tree stand model numbers LW-HCC, LW-HCSSO, LW-SCC, LW-WSCC, and LW-WSCSO.

58. JT&O provided Defendant DDI and its president Mr. J.B. Priest and Defendant XOP with written notice of the '903 Patent no later than on or about October 20, 2014. At the same time, JT&O also told Defendants that Defendants had in the past and were continuing to infringe the '903 Patent. As a result, Defendants, DDI's current president, and Defendant XOP's former president, Mr. J.B. Priest, had notice of their alleged infringement of the '903 Patent.

59. On information and belief, as Defendants DDI and XOP deliberately avoided confirming their high probability of wrongdoing, Defendants have and continue to act, and induce the direct infringement of at least claim 1 of the '903 Patent, with willful blindness.

60. Defendants DDI and/or XOP also have in the past and continue to indirectly infringe at least claim 1 of the '903 Patent in violation of 35 U.S.C. § 271(c) by actively, knowingly, and intentionally contributing to an underlying direct infringement by other persons, such as Defendants' patrons, customers, and end users, by offering for sale and/or selling Defendants' tree stands in the United States without authority or license from JT&O and in a manner understood and intended to infringe JT&O's '903 Patent.

61. Defendant DDI and/or XOP indirectly infringed at least claim 1 of the '903 Patent in violation of 35 U.S.C. § 271(c) by importing, making, using, offering for sale, and selling specially designed climber tree stands without a belt knowing and intending that a belt will be added to the climber tree stands in an infringing manner, including but not limited to tree stand model numbers LW-HCC, LW-HCSSO, LW-SCC, LW-WSCC, and LW-WSCSO.

62. Defendant DDI's and/or XOP's tree stands without a belt are (i) a component and material part of the inventions claimed in at least claim 1 of the '903 Patent, (ii) knowingly and especially designed for use in infringing at least claim 1 of the '903 Patent, (iii) are intended to be used to infringe at least claim 1 of the '903 Patent, and (iv) not a staple item of commerce suitable for substantial non-infringing use.

63. Customers who reside in the State of Tennessee, including the Eastern District of Tennessee, and elsewhere throughout the United States may purchase Defendants' tree stands without a belt from Defendants.

64. Defendant DDI and/or XOP indirectly infringed at least claim 1 of the '903 Patent in violation of 35 U.S.C. § 271(c) by importing, making, using, offering for sale, and selling

specially designed replacements belts for climber tree stands, including but not limited to belt model numbers XOP-TB22-1.4-YT and XOP-TB22-1.56-YT.

65. Defendant DDI's and/or XOP's specially designed replacement belts are (i) a component and material part of the inventions claimed in at least claim 1 of the '903 Patent, (ii) knowingly and especially designed for use in infringing at least claim 1 of the '903 Patent, (iii) are intended to be used to infringe at least claim 1 of the '903 Patent, and (iv) not a staple item of commerce suitable for substantial non-infringing use.

66. On information and belief, as Defendant DDI and XOP deliberately avoided confirming their high probability of wrongdoing, Defendants have and continue to act, and contribute to the direct infringement of at least claim 1 of the '903 Patent, with willful blindness.

67. Customers who reside in the State of Tennessee, including the Eastern District of Tennessee, and elsewhere throughout the United States may purchase Defendants' replacement belts from Defendants.

68. Defendants' infringement of the '903 Patent has been, and continues to be, objectively reckless, willful and deliberate, entitling JT&O to increased damages pursuant to 35 U.S.C. §284 and to attorneys' fees pursuant to 35 U.S.C. §285.

69. JT&O has and continues to suffer damages as a direct and proximate result of Defendants' past, present, and/or future infringement of the '903 Patent and will suffer additional and irreparable damages unless Defendants are permanently enjoined by this Court from continuing their infringement. JT&O has no adequate remedy at law.

70. JT&O is entitled to: (i) damages adequate to compensate it for Defendants' past, present, and future infringement of the '903 Patent up to and including the date of judgment, which amounts to, at a minimum, a reasonable royalty; (ii) JT&O's lost profits; (iii) treble damages; (iv) attorneys' fees; (v) costs; and (vi) a preliminary and thereafter permanent injunction.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff JT&O seeks the following relief:

- a. That Defendants be enjoined from further infringement of the '903 Patent pursuant to 35 U.S.C. §283;
- b. That Defendants be ordered to pay damages adequate to compensate JT&O for Defendants' past, present, and future infringement of the '903 Patent up to and including the date of judgment pursuant to 35 U.S.C. §284;
- c. That Defendants be ordered to pay JT&O its lost profits due to Defendants' past, present, and future infringement of the '903 Patent up to and including the date of judgment pursuant to 35 U.S.C. §284;
- d. That Defendants be ordered to pay JT&O treble damages pursuant to 35 U.S.C. §284;
- e. That Defendants be ordered to pay prejudgment interest pursuant to 35 U.S.C. §284;
- f. That Defendants be ordered to pay all costs associated with this action pursuant to 35 U.S.C. §284;
- g. That Defendants be ordered to pay JT&O's attorneys' fees pursuant to 35 U.S.C. §285;
- h. That JT&O be granted such other and additional relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Fed. R. Civ. P. 38(b), JT&O demands a trial by jury of all issues triable of right by a jury.

Respectfully submitted, this 11th day of January, 2016.

/s/ Stephen R. Risley _____

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically on January 11, 2016 with the clerk of the court for the U.S. District Court, Eastern District of Tennessee, and thereby served on all counsel who have consented to electronic service.

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