

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

CMB Enterprises, LLC,)	Civil Case No. _____
)	
Plaintiff,)	
)	
vs.)	<u>COMPLAINT</u>
)	
Street & Performance Electronics, Inc.,)	Jury Trial Demanded
)	
Defendants.)	
)	

Plaintiff CMB Enterprises, LLC (“CMB”), for its Complaint against Street & Performance Electronics, Inc. (“Street”), states as follows:

THE PARTIES

1. Plaintiff CMB is a Minnesota limited liability company having its principal place of business in Prior Lake, Minnesota.
2. Upon information and belief, defendant Street is an Arkansas corporation with its principal place of business in North Little Rock, Arkansas.

JURISDICTION AND VENUE

3. This action arises out of the acts of Congress relating to patents, Title 35 U.S.C. §§ 271 and 281-285.
4. This Court has subject matter jurisdiction under the provisions of Title 28 U.S.C. § 1338(a).
5. Venue is proper in this district pursuant to the provisions of Title 28 U.S.C. §§ 1391 and 1400(b).

FACTUAL BACKGROUND

6. On June 13, 2000, United States Patent No. 6,073,609 (the “‘609 Patent”) entitled “Intake Device for Use with Internal Combustion Engines,” was duly and legally issued by the United States Patent and Trademark Office to inventors Mark L. Buswell and Craig L. Buswell, a true and correct copy of which is attached hereto as *Exhibit A*.

7. On January 9, 2001, United States Patent No. 6,170,460 (the “‘460 Patent”) entitled “Intake Device for Use with Internal Combustion Engines,” was duly and legally issued by the United States Patent and Trademark Office to inventors Mark L. Buswell and Craig L. Buswell, a true and correct copy of which is attached hereto as *Exhibit B*.

8. On August 5, 2003, United States Patent No. 6,601,562 (the “‘562 Patent”) entitled “Intake Devices for Use with Internal Combustion Engines,” was duly and legally issued by the United States Patent and Trademark Office to inventors Mark L. Buswell and Craig L. Buswell, a true and correct copy of which is attached hereto as *Exhibit C*.

9. Mark L. Buswell and Craig L. Buswell have assigned the ‘609 Patent, the ‘460 Patent, and the ‘562 Patent and all of their rights thereunder to Plaintiff CMB.

10. On July 17, 2003 CMB and Street entered a License Agreement in which CMB granted Street the exclusive right to manufacture, make, use, or sell products using the technology protected by the ‘609 and ‘460 Patents and also the patent to be issued for U.S. Patent Application No. 09/753,468 (which issued as the ‘562 Patent). A true and correct copy of the License Agreement is attached hereto as *Exhibit D*.

11. In consideration for the exclusive right to manufacture, make, use or sell products using the technology protected by the '609, '460, and '562 Patents, Street agreed to pay CMB royalties on sales of the licensed products not later than the last day of each January, April, July, and October. Along with each royalty payment, Street further agreed to provide CBS a written statement detailing all amounts due for the royalty period.

12. In consideration for the rights licensed under the License Agreement, Street agreed to pay CMB a minimum royalty of \$6,000 per month, or \$18,000 per quarter.

13. In violation of the License Agreement, Street failed to make the required royalty payments and failed to provide any accounting of its sales to CMB.

14. On September 30, 2004, CMB provided notice to Street that, if Street failed to cure its breaches within 30 days of receiving the notice, the License Agreement would be terminated. A true and correct copy of the notice is attached hereto as *Exhibit E*.

15. More than 30 days have passed since Street received CMB's notice and Street has not cured its breaches.

16. Despite the termination of its licensed rights to manufacture, make, use or sell products using the technology protected by the '609, '460, and '562 Patents, Street continues to make, use and/or sell products protected by the '609, '460, and '562 Patents.

COUNT I

PATENT INFRINGEMENT – '609 PATENT

17. CMB incorporates by reference paragraphs 1 through 16 above.

18. Since the termination of the License Agreement, Street has directly, indirectly, contributorily and/or by inducement infringed the '609 Patent through its manufacture, use, sale

and/or offer for sale of intake devices for use with internal combustion engines, which utilize technology protected by the '609 Patent.

19. Street has actual knowledge of the '609 Patent and has willfully, deliberately and wantonly infringed the '609 Patent.

20. Street's infringement has injured CMB and will continue to injure CMB unless enjoined by this Court.

21. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, CMB hereby demands a jury trial in this cause of action for patent infringement as set forth in this Count I.

COUNT II

PATENT INFRINGEMENT - '460 PATENT

22. CMB incorporates by reference paragraphs 1 through 21 above.

23. Since the termination of the License Agreement, Street has directly, indirectly, contributorily and/or by inducement infringed the '460 Patent through its manufacture, use, sale and/or offer for sale of intake devices for use with internal combustion engines, which utilize technology protected by the '460 Patent.

24. Street has actual knowledge of the '460 Patent and has willfully, deliberately and wantonly infringed the '460 Patent.

25. Street's infringement has injured CMB and will continue to injure CMB unless enjoined by this Court.

26. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, CMB hereby demands a jury trial in this cause of action for patent infringement as set forth in this Count II.

PATENT INFRINGEMENT – ‘562 PATENT

COUNT III

27. CMB incorporates by reference paragraphs 1 through 26 above.

28. Since the termination of the License Agreement, Street has directly, indirectly, contributorily and/or by inducement infringed the ‘562 Patent through its manufacture, use, sale and/or offer for sale of intake devices for use with internal combustion engines, which utilize technology protected by the ‘562 Patent.

29. Street has actual knowledge of the ‘562 Patent and has willfully, deliberately and wantonly infringed the ‘562 Patent.

30. Street’s infringement has injured CMB and will continue to injure CMB unless enjoined by this Court.

31. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, CMB hereby demands a jury trial in this cause of action for patent infringement as set forth in this Count III.

COUNT IV

BREACH OF LICENSE AGREEMENT

32. CMB incorporates by reference paragraphs 1 through 31 above.

33. Street’s failure to pay royalties as required under the License Agreement constitutes a breach of contract.

34. CMS has suffered damages as a result of Street’s breach in an amount to be determined at trial.

COUNT V

DEMAND FOR ACCOUNTING

35. CMB incorporates by reference paragraphs 1 through 34 above.

36. Street has failed to provide an accounting to CMB of its sales under the License Agreement.

37. CMB hereby demands an accounting from Street and payment of all royalties and other compensation determined to be due and owing to CMB following the accounting.

WHEREFORE, CMB prays for judgment as follows:

1. That Street and its respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, contributorily and/or by inducement have infringed United States Patent No. 6,073,609.

2. That Street and its respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, be preliminarily and then permanently enjoined from infringing, inducing others to infringe or contributorily infringing United States Patent No. 6,073,609.

3. That Street and its respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, contributorily and/or by inducement have infringed United States Patent No. 6,170,460.

4. That Street and its respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, be preliminarily and then permanently enjoined from infringing, inducing others to infringe or contributorily infringing United States Patent No. 6,170,460.

5. That Street and its respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, contributorily and/or by inducement have infringed United States Patent No. 6,601,562.

6. That Street and its respective agents, servants, officers, directors, employees and all persons acting in concert with them, directly or indirectly, be preliminarily and then permanently enjoined from infringing, inducing others to infringe or contributorily infringing United States Patent No. 6,601,562.

7. That Street be ordered to account for and pay to CMB the damages CMB is entitled to under applicable law as a consequence of Street's acts of infringement concerning U.S. Patent No. 6,072,609, U.S. Patent No. 6,601,562, and U.S. Patent No. 6,170,460 and that said damage be increased three-fold under 35 U.S.C. § 284.

8. That CMB be awarded pre-judgment interest and its costs, disbursements and its attorneys' fees pursuant to 35 U.S.C. § 285.

9. That Street be ordered to account for and pay to CMB all royalties owed under the License Agreement.

10. That Street be ordered to reimburse CMB for its attorney fees incurred in this action pursuant to Paragraph 15 of the License Agreement.

11. That CMB be granted other just and equitable relief as the Court shall order.

Dated: November 12, 2004

LINDQUIST & VENNUM P.L.L.P.

By _____s/Sarah B. Stroebel_____
Bruce H. Little, #17421X
Sarah B. Stroebel, #314122
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 55402
Telephone: 612/371-3211

**ATTORNEYS FOR PLAINTIFF CMB
ENTERPRISES, LLC.**