



3. Upon information and belief, Defendant Exmark Manufacturing Company Incorporated (“Exmark”) is a wholly-owned subsidiary of Defendant The Toro Company and is incorporated in the State of Nebraska, with a principal place of business at 2101 Ashland Avenue, Beatrice, Nebraska 68310.

4. On February 9, 2016, United States Patent No. 9,254,865 (hereinafter “the ‘865 Patent”), titled “Steering Systems, Steering and Speed Coordination Systems and Associated Vehicles” was duly and legally issued to MTD as assignee. MTD has been, and still is, the owner of all rights, title and interest in the ‘865 Patent, including the right to exclude the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the ‘865 Patent.

### **JURISDICTION**

5. This Court has original subject matter jurisdiction over this controversy concerning patent infringement pursuant to 28 U.S.C. §§ 1331 and 1338(a) and 35 U.S.C. §§ 271 and 281.

6. This Court has personal jurisdiction over the Defendants pursuant to the provisions of the Ohio Long Arm Statute, O.R.C. § 2307.382, and the laws of the United States based upon, among other things, the following: both Toro and Exmark maintain established distribution networks for offering for sale, selling and/or shipping into this district their products, including one or more of the Infringing Lawnmowers (hereinafter defined) in their TimeCutter® line and eXmark® S-Series line. Both Toro and Exmark sell, have sold, offer for sale, shipped and do ship into this district the Infringing Lawnmowers. The Defendants’ infringement of the ‘865 Patent has tortiously injured MTD in this district. Further, the Defendants (a) regularly solicit business in this district and sell a substantial amount of products in this district; (b) upon

information and belief, are engaged in substantial and non-isolated activities within this district, whether such activities are wholly within Ohio or otherwise; and (c) derive substantial revenue from goods used or consumed in this district. Both Toro and Exmark can reasonably be expected to be haled into court in Ohio.

7. Venue is proper in this Court in accordance with 28 U.S.C. §§ 1391 and 1400(b).

**COUNT I - PATENT INFRINGEMENT (THE '865 PATENT)**

8. MTD restates the allegations set forth in paragraphs 1-7 and incorporates them by reference.

9. On February 9, 2016, the '865 Patent was duly and legally issued by the U.S. Patent and Trademark Office. MTD has been, and still is, the owner of all rights, title and interest in the '865 Patent, including the right to exclude the Defendants from making, using, selling, offering to sell, or importing in this district and elsewhere into the United States the patented invention(s) of the '865 Patent.

10. On August 6, 2015, the '865 Patent's application, United States Patent Application No. 14/684,193 (hereinafter "the '193 Application"), was published by the United States Patent and Trademark Office ("USPTO") as United States Patent Publication No. 2015/0217802 (copy attached as Exhibit A).

11. Claims 1 through 20 of the '865 Patent are substantially identical to claims 2-21 of the published '193 Application.

12. The Defendants have directly infringed and continue to infringe the '865 Patent through the sale, offer for sale and use in, and through the manufacture in and/or importation into, the United States of certain products including their Toro® TimeCutter® SWX 5050 Series Riding Lawnmower, Toro® TimeCutter® SW 3200 Series Riding Lawnmower, Toro®

TimeCutter® SW 4200 Series Riding Lawnmower, Toro® TimeCutter® SW 5000 Series Riding Lawnmower, eXmark® S-Series 42 Riding Lawnmower, and eXmark® S-Series 50 Riding Lawnmower (collectively, the “Infringing Lawnmowers”).

13. The Infringing Lawnmowers each literally infringe claims 1 through 20 of the ‘865 Patent. The Infringing Lawnmowers each embody every element of claims 1 through 20 of the ‘865 Patent. To the extent that the Infringing Lawnmowers do not literally infringe these claims, the Infringing Lawnmowers infringe claims 1 through 20 of the ‘865 Patent under the doctrine of equivalents.

14. The Defendants have had actual knowledge of the ‘193 Application since prior to the ‘193 Application’s publication on August 6, 2015.

15. On April 20, 2015, a non-published version of the ‘193 Application was delivered to both Toro and Exmark.

16. On August 11, 2015, counsel for both Toro and Exmark were told that the ‘193 Application had published.

17. On September 22, 2015, counsel for both Toro and Exmark were given a copy of United States Patent Publication No. 2015/0217802 by in-person, hand-delivery along with a letter citing 35 U.S.C. § 154(d).

18. Notwithstanding actual notice of the ‘193 Application, Defendants continued to import, make, use, offer to sell, or sell in the United States and this district the Infringing Lawnmowers after the ‘193 Application’s publication. MTD is entitled to recover from Defendants a reasonable royalty on the Infringing Lawnmowers under 35 U.S.C. § 154(d) for all of the Defendants’ infringing activities occurring after August 6, 2015.

19. Upon information and belief, the Defendants have profited from and will continue to profit from their infringing activities. MTD has been and will be damaged by the Defendants' infringing activities and is entitled to recover damages adequate to compensate it for such infringement, but, in no event, less than a reasonable royalty. The amount of monetary damages MTD has suffered by the acts of the Defendants set forth above cannot be determined without an accounting.

20. The harm to MTD within this judicial district and elsewhere in the United States resulting from the acts of infringement of the '865 Patent by the Defendants is irreparable, continuing, not fully compensable by money damages, and will continue unless the Defendants' infringing activities are enjoined.

21. Defendants' infringing activities related to the Infringing Lawnmowers complained of herein make this an exceptional case entitling MTD to the recovery of its reasonable attorneys' fees under 35 U.S.C. § 285 or other applicable law.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff MTD prays for:

A. a judgment that the '865 Patent was duly and legally issued, is valid, and is enforceable;

B. a judgment that MTD owns the '865 Patent;

C. a judgment that Claims 1-20 of the '865 Patent are substantially identical to Claims 2-21 of the '193 Application as published in United States Patent Publication No. 2015/0217802;

D. a judgment that Toro and Exmark have directly infringed one or more of the claims of the '865 Patent;

E. a preliminary and permanent injunction against further infringement by the Defendants, their respective officers, directors, employees, agents, licensees, servants, affiliates, parent, subsidiaries, successors, and assigns, and any and all persons acting in privity or in concert or participation with any of them;

F. an accounting be had for the profits and damages arising out of the Defendants' infringement of the '865 Patent and for judgment against Toro and Exmark awarding this damages amount, but no less than a reasonable royalty;

G. a judgment that MTD is entitled to a reasonable royalty under 35 U.S.C. § 154(d) for Toro and Exmark importing, making, using, offering for sale or selling the Infringing Lawnmowers after August 6, 2015, and a judgment against Toro and Exmark awarding this damage amount.

H. an award of pre-judgment and post-judgment interest on its damages, as allowed by law;

I. an assessment of MTD's costs and expenses in this action against Toro and Exmark;

J. a finding that this action is exceptional and for an award to MTD of its reasonable attorney's fees incurred in this action under 35 U.S.C. § 285; and

K. such other and further relief as this Court may deem just, equitable, and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff MTD Products Inc hereby demands a trial by jury of all issues so triable.

Dated: February 9, 2016

Respectfully submitted,

/s/ John S. Cipolla

John S. Cipolla (0043614)

Tracy Scott Johnson (0064579)

Mark W. McDougall (0080698)

CALFEE HALTER & GRISWOLD LLP

The Calfee Building

1405 East Sixth Street

Cleveland, OH 44114

Tel: (216) 622-8200

Fax: (216) 241-0816

[jcipolla@calfee.com](mailto:jcipolla@calfee.com)

[tjohnson@calfee.com](mailto:tjohnson@calfee.com)

[mmcdougall@calfee.com](mailto:mmcdougall@calfee.com)

Attorneys for MTD Products Inc