

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BLACKBIRD TECH LLC d/b/a
BLACKBIRD TECHNOLOGIES,

Plaintiff,

v.

MAKITA U.S.A., INC.,

Defendant.

C.A. No. _____

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Blackbird Tech LLC d/b/a Blackbird Technologies (“Blackbird Technologies”) hereby alleges for its Complaint for Patent Infringement against Defendant Makita U.S.A., Inc. (“Makita”) on personal knowledge as to its own activities and on information and belief as to all other matters, as follows:

THE PARTIES

1. Plaintiff Blackbird Technologies is a Delaware limited liability company with its principal place of business located at 200 Baker Avenue, Suite 203, Concord, Massachusetts 01742.

2. On information and belief, Defendant is a California corporation. Defendant may be served via its California registered agent, Atsuhiro Oyama, 14930 Northam St., La Mirada, CA 90638.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the provisions of the Patent Laws of the United States of America, Title 35, United States Code §§ 100, *et seq.*

4. Subject-matter jurisdiction over Blackbird Technologies' claims is conferred upon this Court by 28 U.S.C. § 1331 (federal question jurisdiction) and 28 U.S.C. § 1338(a) (patent jurisdiction).

5. This Court has personal jurisdiction over Defendant because Defendant is subject to at least specific jurisdiction in Delaware. Defendant has also established minimum contacts with this forum. The exercise of personal jurisdiction comports with Defendant's right to due process because, as described below, Defendant has purposefully availed itself of the privilege of conducting activities within Delaware such that it should reasonably anticipate being haled into court here. As alleged herein, acts by Defendant in this District have caused injury to Blackbird Technologies.

6. Defendant regularly conducts business in Delaware, by marketing, selling, and/or offering for sale accused battery back accessories through its website, www.makitatools.com, which is accessible throughout the United States, including Delaware. Upon information and belief, Defendant intends its website to be used by Delaware residents to learn about accused battery back accessories, and to purchase such accessories and/or to learn where such accessories may be purchased in Delaware. Defendant's accused products are available on other websites, such as amazon.com and homedepot.com, accessible through the United States, including Delaware. Upon information and belief, Defendant is aware that accused products are available on such other websites, and sells such products through such websites. According to makitatools.com, the accused product is available in at least two Home Depot stores located in Delaware. Upon information and belief, Defendant inserts accused products into the stream of commerce, with the knowledge and intention that they be offered and sold to, and used by, Delaware residents.

7. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and § 1400(b).

U.S. PATENT NO. 9,620,989

8. U.S. Patent No. 9,620,989 (the “’989 patent” or “patent-in-suit”) entitled, “Rechargeable Battery Accessories,” was duly and legally issued by the U.S. Patent and Trademark Office on April 11, 2017. Blackbird Technologies is the owner by assignment of all right, title, and interest in and to the ’989 patent, including all right to recover for any and all infringement thereof. The ’989 patent is valid and enforceable. A true and correct copy of the ’989 patent is attached as Exhibit A.

COUNT I – INFRINGEMENT OF THE ’989 PATENT

9. Blackbird Technologies reasserts and incorporates by reference the preceding paragraphs of this Complaint as if fully set forth herein.

10. Defendant infringes one or more claims of the ’989 patent, including at least claims 10 and 15, by importing, making, using, selling, and/or offering to sell certain cordless power tool battery pack accessories, including the Makita ADP05 18V LXT Lithium-Ion Cordless Power Source (*see* Ex. B), which infringes at least claim 10, and the Makita DML807 18V LXT Lithium-Ion Cordless L.E.D. Lantern/Flashlight (*see* Ex. C), which infringes at least claim 15.

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11. The Makita ADP05 18V LXT Lithium-Ion Cordless Power Source, pictured below, infringes at least claim 10:



(See Ex. B). As shown, the Makita ADP05 18V LXT Lithium-Ion Cordless Power Source includes a housing (the plastic body) comprising at least a first side (the underside) having first and second opposing lateral edges (the longer sides of the underside). The Makita ADP05 18V LXT Lithium-Ion Cordless Power Source also includes a first interface (the interface on the underside) having a first mechanical interface having first and second alignment guides defined along the lateral edges (the guide members on the longer sides of the underside). These alignment guides are configured to slidably and detachably connect the Makita ADP05 18V LXT Lithium-Ion Cordless Power Source to a cordless power tool battery pack (such as compatible Makita lithium-ion batteries). The first interface on the Makita ADP05 18V LXT Lithium-Ion Cordless Power Source also includes a first electrical interface (metal contacts on the underside). The Makita ADP05 18V LXT Lithium-Ion Cordless Power Source also includes second and third interfaces, each having mechanical and electrical interfaces (the two USB ports) configured to electrically connect the accessory to devices (*e.g.*, USB-power devices like mobile phones).

12. The Makita DML807 18V LXT Lithium-Ion Cordless L.E.D. Lantern/Flashlight, pictured below, infringes at least claim 15.



(See Ex. C). As shown, the Makita DML807 18V LXT Lithium-Ion Cordless L.E.D. Lantern/Flashlight includes first and second interfaces, as described in the preceding paragraph, and also includes “three L.E.D. lighting modes,” including a “flashlight mode.” (*Id.*).

13. Blackbird Technologies has sustained damages as a direct and proximate result of Defendant’s infringement of the ’989 patent.

14. As a consequence of Defendant’s past infringement of the ’989 patent, Blackbird Technologies is entitled to the recovery of past damages in the form of, at a minimum, a reasonable royalty.

15. As a consequence of Defendant's continued and future infringement of the '989 patent, Blackbird Technologies is entitled to royalties for its infringement of the '989 patent on a going-forward basis.

PRAYER FOR RELIEF

WHEREFORE, Blackbird Technologies respectfully requests that this Court enter judgment against Defendant, as follows:

A. Adjudging that Defendant has infringed at least claims 10 and 15 of the '989 patent, in violation of 35 U.S.C. § 271(a);

B. An award of damages to be paid by Defendant adequate to compensate Blackbird Technologies for Defendant's past infringement and any continuing or future infringement up until the date such judgment is entered, and in no event less than a reasonable royalty, including interest, costs, and disbursements pursuant to 35 U.S.C. § 284 and, if necessary to adequately compensate Blackbird Technologies for Defendant's infringement, an accounting of all infringing sales including, but not limited to, those sales not presented at trial;

C. Ordering Defendant to continue to pay royalties to Blackbird Technologies for infringement of the '989 patent on a going-forward basis;

D. Adjudging that this case be exceptional under 35 U.S.C. § 285 and awarding enhanced damages, including costs and attorneys' fees, to Blackbird Technologies;

E. Awarding Blackbird Technologies pre-judgment and post-judgment interest at the maximum rate permitted by law on its damages; and

F. Granting Blackbird Technologies such further relief as this Court deems just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Blackbird Technologies demands a trial by jury on all claims and issues so triable.

Dated: April 28, 2017

STAMOULIS & WEINBLATT LLC

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