

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
ST. PAUL DIVISION**

DAVID BERGER and	)	
BERGER TABLE PADS, INC.,	)	CASE NO. 0:17-cv-04326-PJS-FLN
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
LYDON-BRICHER MANUFACTURING	)	
COMPANY and SENTRY TABLE PAD CO.	)	
d/b/a Table Pads 2 Go Company and	)	
Tablepadstogo.com,	)	
	)	
Defendants.	)	

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT AND DAMAGES**

Come now Plaintiffs, David Berger and Berger Table Pads, Inc., by counsel, and for their First Amended Complaint against Defendants, Lydon-Bricher Manufacturing Company and Sentry Table Pad Co. d/b/a Table Pads 2 Go Company and Tablepadstogo.com, allege and say as follows:

**I. NATURE OF THE ACTION**

1. This is a civil action for patent infringement under the laws of the United States, 35 U.S.C. § 271 *et seq.*

**II. THE PARTIES**

2. Plaintiff, David Berger ("Berger"), is a citizen and resident of the State of Indiana.

3. Plaintiff, Berger Table Pads, Inc. ("Berger Table Pads"), is a corporation organized and existing under the laws of the State of Indiana with its principal place of business in Indianapolis, Indiana.

4. Defendant, Lydon-Bricher Manufacturing Company (“Lydon-Bricher”), is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business in Oakdale, Minnesota.

5. Defendant, Sentry Table Pad Co. (“Sentry”), is a corporation organized and existing under the laws of the State of Minnesota with its principal place of business in Oakdale, Minnesota, doing business as Table Pads 2 Go Company and Tablepadstogo.com.

### **III. JURISDICTION AND VENUE**

6. This Court has original subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal question), 1332 (diversity jurisdiction), and 1338(a) (exclusive jurisdiction over patents).

7. Venue is proper under 28 U.S.C. §§ 1391(a)(1) and (c), and 1400(b).

8. Defendants are subject to personal jurisdiction in this district and, as Minnesota corporations, “reside” in this District pursuant to *TC Heartland LLC v. Kraft Foods Group Brands LLC*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1514 (2017).

9. There is diversity of citizenship between Plaintiffs and Defendants, and amount in controversy is in excess of Seventy-Five Thousand Dollars (\$75,000.00) exclusive of interest and costs.

### **IV. FACTUAL BACKGROUND**

10. On December 26, 2000, the United States Patent and Trademark Office ("Patent Office") duly and legally issued United States Patent No. 6,165,577 (the "'577 Patent"), entitled "Magnetic Latching System for Protective Tabletop Pads." A true and correct copy of the '577 Patent is attached hereto and incorporated by reference herein as Exhibit "A."

11. Plaintiff Berger is the Inventor of the '577 Patent.

12. Plaintiff Berger is the owner of the '577 Patent.

13. At all relevant times herein, Plaintiff Berger Table Pads manufactured and marketed table pads using the latching device described in the '577 Patent under a license from Berger.

14. Defendants have manufactured, offered for sale, sold, or used all or in material part of an infringing device for magnetically latching protective tabletop pad sections together in this District and elsewhere. That latching device includes, among other things, a magnetic element on the side of one table pad and a magnetic element on the side of the opposing table pad.

15. Plaintiffs have demanded that Defendants cease and desist from acts that infringe the '577 Patent, but Defendants have refused to cease and desist.

## V. CAUSES OF ACTION

### **Count I: Infringement of U.S. Patent No. 6,165,577**

16. Plaintiffs reincorporate the allegations of paragraphs 1 through 15 of Plaintiffs' First Amended Complaint as if fully restated herein.

17. Defendants infringed the '577 Patent in this District and elsewhere by making, using, offering for sale, or selling protective tabletop pad sections containing devices that magnetically latch those sections.

18. Defendants' table pad magnetic latching device literally infringes Claim 1 of the '577 Patent, which reads as follows:

1. A tabletop protective pad section for resting on a top surface of a table, the pad section comprising:

a base member having a first face for facing in an upward direction and a second face for facing in a downward direction, the first and second faces being oriented substantially parallel to each other, each of the first and second faces having a perimeter, the base member having a perimeter edge face extending between the perimeters of the first and second faces, a pair of side portions of the perimeter edge face being oriented generally parallel to each other on opposite sides of the base member;

a magnetically-active structure mounted on the first side portion of the perimeter edge face of the base member; and

a magnetically-receptive structure mounted on the second side portion of the perimeter edge face;

wherein the magnetically-active structure of the first side portion of a first one of the pad sections is magnetically couplable to the magnetically-receptive structure of the second side portion of a second one of the pad sections for removably holding the first and second pad sections in an adjacent condition.

(Emphases added).

19. Each and every element recited in Claim 1 has identical correspondence in Defendants' embodiment, as illustrated in Exhibit "B," which is incorporated herein by reference.

20. Most notably, as required by Claim 1, Defendants' embodiment has a magnetically-active structure mounted on the first side portion of the perimeter edge face of the base member, and a magnetically-receptive structure mounted on the second side portion of the

perimeter edge face, where the two structures are magnetically couplable for removably holding the first and second pad sections in an adjacent condition.

21. In addition, Defendants' embodiment infringes Claim 1 of the '577 Patent under the doctrine of equivalents.

22. Specifically, the device described in Claim 1 of the '577 Patent and Defendants' embodiment:

- (a) perform substantially the same function of connecting together two (2) table pad sections;
- (b) use magnets on the perimeter edges of the pad sections in substantially the same way;
- (c) yield substantially the same result by coupling the two table pad sections together in a way that each pad is easily separable from the other.

23. Plaintiffs have marked their table pad products in accordance with 35 U.S.C. § 287.

24. Defendants have knowingly, willfully, and deliberately infringed the '577 Patent in conscious disregard of Plaintiffs' rights, making this case exceptional within the meaning of 35 U.S.C. § 285 and justifying treble damages pursuant to 35 U.S.C. § 284.

25. Defendants will continue to infringe the '577 Patent, causing immediate and irreparable harm unless this Court enjoins and restrains its activities.

26. The infringement by Defendants has and will deprive Plaintiffs of sales, profits, royalties, and other related revenue which they would have made or would enjoy in the future, have injured Plaintiffs in other respects, and will cause Plaintiffs added injury and damage,

including loss of sales, profits, royalties and other related revenue in the future unless Defendants, and each of them, are enjoined from infringing the '577 Patent.

## **VI. PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request this Court to:

- (a) Enter judgment in favor of Plaintiffs that U.S. Patent No. 6,165,577 is valid, enforceable, and has been infringed by Defendants;
- (b) Issue a permanent injunction restraining Defendants, their officers, directors, agents, employees, successors, subsidiaries, assigns, and all persons acting in privity or in concert or participation with Defendants from the continued infringement, direct or contributory, or active inducement of infringement by others of U.S. Patent No. 6,165,577;
- (c) Direct Defendants to file with this Court, and to serve on Plaintiffs, a written report under oath setting forth in detail the manner and form in which Defendants will comply with the injunction;
- (d) Order Defendants to account for and pay to Plaintiffs, Plaintiffs' actual damages suffered by reason of Defendants' infringement of U.S. Patent No. 6,165,577 and that such damages be trebled and paid to Plaintiffs due to Defendants' deliberate, willful, and knowing conduct;
- (e) Order Defendants to pay Plaintiffs their costs, expenses, and fees, including reasonable attorneys' fees pursuant to 35 U.S.C. § 285, and pre-judgment and post-judgment interest at the maximum rate allowed by law; and

- (f) Grant Plaintiffs other such and further relief as the Court may deem just and proper.

/s/ Kevin N. Tharp

Kevin N. Tharp (admitted *pro hac vice*)

[ktharp@rbelaw.com](mailto:ktharp@rbelaw.com)

RILEY BENNETT EGLOFF LLP

141 East Washington Street, Fourth Floor

Indianapolis, IN 46204

317-636-8000

*Attorneys for Plaintiffs,*

*David Berger and Berger Table Pads, Inc.*

**CERTIFICATE OF SERVICE**

I certify that on December 28, 2017 I filed the foregoing *First Amended Complaint for Patent Infringement and Damages* electronically. Service will be made via ECF upon:

Julie B. Wahlstrand  
FAEGRE BAKER DANIELS LLP  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
[julie.wahlstrand@FaegreBD.com](mailto:julie.wahlstrand@FaegreBD.com)

Joshua E Schaub  
Gutwein Law  
60 S Sixth Street, Suite 2800  
Minneapolis, MN 55402  
[joshua.schaub@gutweinlaw.com](mailto:joshua.schaub@gutweinlaw.com)

/s/ Kevin N. Tharp

Kevin N. Tharp