

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

CLERKS OFFICE U.S. DIST. COURT
AT DANVILLE, VA
FILED
2/23/2018
JULIA C. DUDLEY, CLERK
BY: s/ MARTHA L. HUPP
DEPUTY CLERK

WINTRODE ENTERPRISES, INC.,)
)
d/b/a Bulldog Cases)
)
Plaintiff,)
)
)
)
v.)
)
)
VISTA OUTDOOR OPERATIONS LLC,)
)
Defendant.)

Civil Action No. 4:18CV00009

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Wintrode Enterprises, Inc. d/b/a Bulldog Cases (“Bulldog”), by counsel, for its Complaint against Defendant Vista Outdoor Operations LLC (“Vista”), states as follows:

NATURE OF THE ACTION

1. This is a declaratory judgment action arising under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et. seq.* and the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.* Bulldog seeks a declaration of non-infringement and invalidity of U.S. Patent Nos. 7,841,497 and 8,474,670 (“the ’497 patent” and “the ’670 patent,” respectively, and “the ’497 [and/or] ’670 patents,” collectively). True and correct copies of the ’497 and ’670 patents are attached hereto as **Exhibit A** and **Exhibit B**, respectively.

PARTIES

2. Plaintiff Bulldog is a Virginia corporation with its principal place of business in Danville, Virginia.

3. Defendant Vista is a Virginia limited liability company duly organized and existing under the laws of the Commonwealth of Virginia with offices at 2645 International Parkway, Suite 102, Virginia Beach, VA 23452 and 4601 North Fairfax Drive, Suite 220, Arlington, VA 22203.

JURISDICTION AND VENUE

4. Vista is a Virginia limited liability company and has a registered agent with the Commonwealth: CT Corporation System, 4701 Cox Road, Suite 285, Glen Allen, Virginia 23060.

5. This action arises under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*, with a specific remedy sought based upon the laws authorizing actions for declaratory judgment in the courts of the United States, 28 U.S.C. §§ 2201 and 2202. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a) and 1367.

6. Vista is subject to personal jurisdiction in Virginia because it is a Virginia limited liability company and transacts substantial business in Virginia.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400 because Vista is a company organized and existing under the laws of the Commonwealth of Virginia and resides in this judicial district pursuant to § 1391(c).

FACTUAL BACKGROUND

8. Bulldog sells a variety of carrying and storage solutions for weapons.

9. Bulldog's accused holster product incorporates a handgun release mechanism that is typical in the industry.

10. More specifically, Bulldog's accused holster product allows for removal of a handgun from a holster by pressing a lever on a spring that removes a blocking piece of plastic from the handgun trigger guard. When the lever is not depressed, the handgun is "locked" in the holster by the plastic piece holding the trigger guard. In essence, it incorporates the concept of a playground see-saw; when you apply pressure to one side, the other side moves in the opposite direction. In the case of the accused holster, when a user presses inward on the locking mechanism button, the locking piece moves outward and out of the trigger guard. Upon information and belief, the concept is obvious, typical, and has been used in the holster industry since before the effective filing dates of the '497 and '670 patents.

11. On or about June 20, 2016, Winthrop & Weinstine, P.A., a law firm acting on behalf of Vista, sent a letter to Bulldog regarding the '497 and '670 patents that stated: "This letter provides notice that Bulldog is making, using, offering to sell, and/or selling unlicensed holsters...that infringe one or more claims of the '497 Patent and the '670 Patent."

12. The June 20, 2016 letter goes on to state, "[Vista] request[s] that Bulldog immediately cease making, using, offering to sell, and/or selling any of the unlicensed holster products..."

13. On or about September 7, 2016, Winthrop & Weinstine, P.A. sent another letter to Bulldog regarding the '497 and '670 patents reasserting Vista's position that Bulldog's holster was infringing those patents.

14. Bulldog responded to both letters on July 25, 2016 and September 12, 2016, respectively, explaining in detail that it did not infringe either the '497 or '670 patents, and that the patents were invalid. Nonetheless, Bulldog decided, purely for business reasons, to update and redesign the accused holster product in a manner that would address Vista's stated concerns

regarding the '497 and '670 patents. In its letter of September 12, 2016, Bulldog made it clear that its decision to redesign the holster product was not an admission, either express or implied, of any wrongdoing, nor was it an acknowledgement of Vista's purported rights.

15. Bulldog expended significant resources designing and fabricating a superior holster that replaced the older holster product, which Vista had accused of infringing the '497 and '670 patents.

16. Over a year later, on September 13, 2017, Winthrop & Weinstine, P.A. sent another letter to Bulldog informing Bulldog that Vista had identified a third party, not under Bulldog's control, that was still selling Bulldog's older holster product, which Vista had accused of infringing the '497 and '670 patents. This letter stated that "Vista requests a reasonable royalty from Bulldog for each infringing holster Bulldog sold after receiving Vista's June 20, 2016 demand letter."

17. On September 21, 2017, Winthrop & Weinstine, P.A. sent another letter to Bulldog showing that it had purchased one of the older holster products that Vista accused of infringement from this third party over which Bulldog had no control.

18. In response to Vista's letters, Bulldog contacted the third party, whereby the third party took responsibility for selling the older holsters and removed the pictures of the older holster from the website. Apparently the third party still had old Bulldog inventory in stock, including the older holster accused of infringement, so Bulldog recalled any of the older holsters that the third party still had in stock and requested that the third party only sell the newly designed and superior holsters.

19. Counsel for Bulldog and Vista attempted to meet to discuss the matter in 2017, but they did not meet and the matter appeared to be resolved from Bulldog's perspective.

20. On January 18, 2018, Winthrop & Weinstine, P.A. emailed counsel for Bulldog re-raising the matter and stating, “If we do not hear from you, we will take appropriate action.”

21. Vista’s numerous letters as outlined above, the threats and accusations regarding infringement, the demand to pay a royalty, and the claims made by Vista over the last year-and-a-half alleging Bulldog’s infringement of the ’497 and ’670 patents, create a reasonable apprehension and substantial likelihood that, if Bulldog does not pay and agree to enter into a license with Vista, Vista will sue Bulldog for the alleged infringement of the ’497 and/or ’670 patents. Bulldog is unwilling to pay Vista because Bulldog has not infringed and the ’497 and ’670 patents are invalid.

THE PATENTS-IN-SUIT

22. The ’497 Patent, entitled “Holster Retention System,” issued on November 30, 2010, from U.S. Patent Application No. 11/030,270 filed January 6, 2005.

23. Upon information and belief, the listed inventors assigned their interests to Blackhawk Industries Product Group Unlimited LLC in Norfolk, Virginia, a brand of Vista. Upon information and belief, Vista is now the owner of the ’497 patent.

24. The ’670 Patent, also entitled “Holster Retention System,” issued on July 2, 2013, from U.S. Patent Application No. 12/925,648 filed October 27, 2010.

25. Upon information and belief, the listed inventors assigned their interests to Alliant Techsystems Inc., which assigned its interests to Blackhawk Industries Product Group Unlimited LLC in Norfolk, Virginia, a brand of Vista.

CLAIM 1 - DECLARATION OF NON-INFRINGEMENT

26. Paragraphs 1 through 25 above are incorporated by reference as though fully stated herein.

27. Vista has alleged that Bulldog is infringing the '497 and '670 patents.

28. Bulldog has not infringed and does not directly or indirectly infringe any claim of the '497 or '670 patents, either literally or under the doctrine of equivalents.

29. By way of example and without limiting the grounds of non-infringement that will be asserted, the finger button portion of the accused Bulldog holster is not positioned within any "recess" as required by, for example, all independent claims in the '497 and '670 patents.

30. Bulldog expressly reserves the right to assert additional grounds of non-infringement after having the ability to conduct discovery and the Court has construed the claims.

31. Particularly viewed in the light of Vista's allegations of infringement against Bulldog, Vista has created a substantial, immediate and real controversy between the parties as to the non-infringement of the '497 and '670 patents. A valid and justiciable controversy has arisen and exists between Bulldog and Vista within the meaning of 28 U.S.C. § 2201.

32. A judicial determination of non-infringement is necessary and appropriate so that Bulldog may ascertain its rights regarding the '497 and '670 patents.

CLAIM 2 - DECLARATION OF INVALIDITY

33. Paragraphs 1 through 32 above are incorporated by reference as though fully stated herein.

34. Vista has alleged that Bulldog is infringing the '497 and '670 patents.

35. By way of example and without limiting the grounds of invalidity that will be asserted in this action, one or more claims of both the '497 and '670 patents are invalid because they fail to meet the conditions of patentability and/or otherwise comply with one or more of 35 U.S.C. §§ 100 *et seq.*, including, but not limited to, 35 U.S.C. §§ 102, 103, 112, and 101.

36. In particular, the '497 and '670 patents are invalid under 35 U.S.C. § 103 as being rendered obvious over at least U.S. Patent No. 5,918,784, U.S. Patent No. 5,279,021, and U.S. Patent No. 5,832,573, when viewed alone or in light of one another.

37. Upon information and belief, neither U.S. Patent No. 5,279,021 nor U.S. Patent No. 5,832,573, which constitute prior art to both the '497 and '670 patents, were cited during the prosecution of either patent, yet they both teach similar, if not identical, locking mechanisms that when taken alone or combined with other references render the patents obvious.

38. The '497 and '670 patents are also obvious in light of safety gun holsters sold by Fobus Holsters and Pouches as advertised in the 2003-2004 catalog for one of the largest distributors in the holster industry (*i.e.*, Ellett Brothers). A true and correct copy of the relevant excerpt from the 2003-2004 Ellett Brothers Catalog is attached hereto as **Exhibit C**. Upon information and belief, Fobus was selling holsters utilizing a “push button” locking mechanism similar to what is claimed by the asserted patents at least as early as 2003. Upon information and belief, push button locking holsters like those claimed in the '497 and '670 patents were familiar in the industry, and the asserted patents added nothing unique to what was already common knowledge.

39. By way of further example and without limiting the grounds of invalidity that will be asserted in this action, each claim of the '497 and '670 patents is invalid for failure to satisfy the written description requirement of 35 U.S.C. § 112. By way of example only, the following language, and similar variants thereof, limit all independent claims of both the '497 and '670 patents:

[A] ridge extending from the side wall around at least a portion of the lever so as to define a recess, wherein the lever is positioned within the recess . . . and an aperture formed in a portion of the side wall beneath at least a portion of the finger button portion of the lever, wherein the aperture is formed within the recess.

Terms like “recess” and “aperture” are confusingly introduced into the patents for the first time in the claims, without any clarifying definition or apparently applicable explanation in the specifications. Moreover, the term “within” is ambiguous and is a critical claim term according to the parties’ correspondence in which the meaning of the term “within” was paramount to Vista’s explanation of how Bulldog’s accused holster was allegedly infringing.

40. Bulldog expressly reserves the right to assert additional grounds of invalidity after having the ability to conduct discovery and the Court has construed the claims.

41. Particularly viewed in the light of Vista’s allegations of infringement against Bulldog and the demand for a royalty payment, Vista has created a substantial, immediate and real controversy between the parties as to the invalidity of the ’497 and ’670 patents. A valid and justiciable controversy has arisen and exists between Bulldog and Vista within the meaning of 28 U.S.C. § 2201.

42. A judicial determination of invalidity is necessary and appropriate so that Bulldog may ascertain its rights regarding the ’497 and ’670 patents.

PRAYER FOR RELIEF

WHEREFORE, Bulldog prays for a declaration from this Court and judgment against Vista as follows:

- A. That Bulldog does not infringe any claims of the ’497 and/or ’670 patents;
- B. That the ’497 and ’670 patents are invalid and unenforceable;
- C. That this Court award Bulldog its costs, expenses and attorney’s fees pursuant to 35 U.S.C. § 285; and
- D. Such other and further relief as this Court deems just, reasonable and proper.

JURY DEMAND

Bulldog demands a trial by jury on all matters and issues triable by a jury.

Dated: February 23, 2018

Respectfully submitted,

Wintrade Enterprises, Inc.

/s/ Joshua F. P. Long

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