

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a), as this is a civil action for patent infringement arising under the patent laws of the United States. In the alternative, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(3), as the amount in controversy exceeds \$75,000, and the action is between citizens of different States, in which a citizen of a foreign state is an additional party.

5. This Court has *in personam* jurisdiction over Elan Polo pursuant to the New Jersey long-arm statute, New Jersey Court *Rule* 4:4-4(b)(1).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b), because Elan Polo offers for sale and sells shoes and other footwear, and conducts business throughout the United States, including in this judicial district, and has committed acts of patent infringement in this judicial district.

FACTS AND CLAIM FOR RELIEF

7. On July 18, 1989, the United States Patent and Trademark Office duly and legally issued United States Patent No. 4,848,009 (the “’009 Patent”) to Rodgers for his invention drawn to certain flashing footwear. Rodgers has been the owner of the ‘009 Patent since the time of its issuance, and has engaged in the commercial sale of lighting modules for use in flashing footwear under the ‘009 Patent since at least the early 1990s. At all times, Rodgers has had the right to assert an action for infringement of the ‘009 Patent.

8. By agreement dated December 1, 2006, Rodgers granted an exclusive license to the ‘009 Patent to Chameleon (the “Chameleon License Agreement”). The Chameleon

License Agreement provides Chameleon with the exclusive right to assert an action for infringement of the '009 Patent on its own behalf.

9. Upon information and belief, Elan Polo has used, made, imported into the United States, sold, or offered for sale shoes or other flashing footwear that directly, indirectly, contributorily, or by inducement, infringe the '009 Patent. Upon information and belief, these infringing activities have occurred throughout the United States, including without limitation, in the State of New Jersey, without any form of authorization from plaintiffs of any nature.

10. Elan Polo's infringement of the '009 Patent has been willful and deliberate, without color of right. Elan Polo continues to willfully infringe the '009 Patent in the manner described above, notwithstanding numerous requests by plaintiffs to cease such infringing activities. Upon information and belief, Elan Polo will continue such infringing acts unless permanently enjoined by this Court.

WHEREFORE, plaintiffs demand that the Court enter judgment against Elan Polo as follows:

- A. Adjudging and decreeing that Elan Polo has willfully infringed, and is currently willfully infringing, the '009 Patent;
- B. Pursuant to 35 U.S.C. § 283, permanently enjoining Elan Polo from continued infringement of the '009 Patent;
- C. Awarding compensatory damages to plaintiffs in an amount to be determined, including pre-judgment interest thereon;
- D. Pursuant to 35 U.S.C. § 284, awarding treble damages to plaintiffs;

E. Pursuant to 35 U.S.C. § 285, awarding plaintiffs the attorneys' fees and costs that they have incurred in maintaining this action;

F. Such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, plaintiffs hereby demand a jury trial on all issues so triable.

/s/ Todd L. Schleifstein

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