

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

DUFFY DIEU d/b/a DD MACHINE,
Plaintiff,

v.

JAMES GILBERT HILLWIG, JR. AND
HILLWIG TOOL, LLC.,
DefendantS.

Cause No.

COMPLAINT FOR
DECLARATORY JUDGMENT OF
PATENT INVALIDITY, PATENT
NON-INFRINGEMENT,
LANHAM ACT VIOLATION,
FRAUD AND UNFAIR
COMPETITION

DEMAND FOR JURY TRIAL

Plaintiff Duffy Dieu, d/b/a DD Machine, (“Mr. Dieu”) complains of Defendants James Gilbert Hillwig, Jr. and Hillwig Tool, LLC (“Hillwig”) as follows:

NATURE OF LAWSUIT

1. This is a claim for declaratory judgment of patent invalidity (Count I) and non-infringement (Count II) arising under the Federal Declaratory Judgments Act, 28 U.S.C. §2201, *et seq.*, and under the Patent Laws of the United States, 35 U.S.C. §1, *et seq.* In particular, Plaintiff seeks a declaratory judgment that the claims of Defendant's United States Patent No. 8,910,413 are not valid under one or more of 35 U.S.C. §§ 102, 103 and 112,

1 and/or are not infringed under one or more of 35 U.S.C. §271 by any product made, sold,
2 offered for sale or used by Mr. Dieu.

3 2. This is also a claim for false or misleading representation of fact in violation of
4 Section 43(a) of the Lanham Act (Count III); common law fraud (Count IV) and Unfair
5 Competition under the laws of the State of Washington (Count V).

6 **THE PARTIES**

7 3. Mr. Dieu is a Washington resident with a place of both residence and business
8 in Poulsbo, Washington. Doing business as “DD Machine,” Mr. Dieu is engaged in the
9 business of designing, developing, manufacturing and selling a number of machined products
10 and tools, including tools for adjusting sights on handguns.

11 4. Upon information and belief, Defendant James Gilbert Hillwig, Jr. is a
12 resident of Meadville, Pennsylvania. Upon information and belief, Defendant Hillwig Tool,
13 LLC is a limited liability company formed under the laws of the State of Pennsylvania with a
14 principal place of business at 18224 Bertschy Rd., Meadville PA. Upon information and
15 belief, Mr. Hillwig is the sole owner, operator and principal officer of Hillwig Tool. Upon
16 information and belief, Mr. Hillwig and Hillwig Tool are engaged in the business of making,
17 selling, offering for sale and using, in the United States, tools for adjusting sights on
18 handguns. Upon information and belief, Mr. Hillwig and Hillwig Tool transact business and
19 have provided to customers in this judicial district and throughout the State of Washington
20 tools for adjusting sights on handguns.

21 **JURISDICTION AND VENUE**

22 5. This is an action for a Declaratory Judgment that the claims of United States
23 Patent Number 8,910,413 are not valid and/or are not infringed by any product made, sold,
24 offered for sale, used or otherwise distributed in the United States Mr. Dieu. This action
25 arises under the Patent Laws of the United States. Jurisdiction is based upon 28 U.S.C. §§
26 1338(a), 2201 and 2202. As set forth below, an actual justiciable controversy exists between
27 the parties. This Court has supplemental jurisdiction over the related state law claims

1 pursuant to 28 U.S.C. §1367(a) because these claims form part of the same case or
2 controversy.

3 6. Personal Jurisdiction over the defendants is proper in this Court in that
4 Defendants have purposefully availed themselves of the privilege of transacting business in
5 the State of Washington. Venue in this judicial district is proper under 28 U.S.C. §§ 1391(b),
6 1391(c) and/or 1400(b).

7 BACKGROUND OF THE CONTROVERSY

8 7. Upon information and belief, Mr. Hillwig is the owner of record of United
9 States Patent Number 8,910,413 (“the ‘413 Patent”) which issued on December 16, 2014. A
10 copy of the ‘413 patent is attached hereto as **Exhibit A**. The ‘413 patent generally discloses a
11 “sight pushing apparatus” and includes fifteen (15) claims directed to such an apparatus. The
12 effective filing date of the ‘413 Patent is February 20, 2013.

13 8. On March 24, 2015, Mr. Hillwig, through his counsel, sent a letter to Mr. Dieu
14 at his address in Poulsbo, Washington, accusing Mr. Dieu of infringing the ‘413 Patent. In
15 this letter, Mr. Hillwig claimed that Mr. Dieu, through his business “DD Machine,” was
16 “selling a Universal Handgun Sight Pusher Tool” that allegedly “clearly includes every
17 element of the ‘413 Patent” and “is an unabashed knock-off of that shown in the ‘413 Patent.”
18 The March 24, 2015 letter demands that Mr. Dieu, “remove all advertisements and
19 solicitations to purchase the Universal Sight Pusher Tool from internet advertisements and
20 online distributors such as eBay and that [Mr. Dieu] cease and desist from selling the
21 infringing product.” In addition, the March 25, 2015 letter states that “Mr. Hillwig has the
22 strongest of intentions to enforce the proprietary rights afforded to him by US patent laws”
23 and that he is “confident that a federal court of competent jurisdiction will clear see that your
24 knock-off of the product protected by the ‘413 patent constitutes an infringement thereof and
25 will award substantial damages and enter an order to refrain from further sales.” A copy of
26 the March 24, 2015 letter from counsel for Mr. Hillwig is attached as **Exhibit B**.
27

1 9. Since the time of the March 24, 2015 letter, Mr. Hillwig has continued to
2 publicly accuse Mr. Dieu and DD Machine of patent infringement and threaten litigation.

3 10. On or about April 12, 2017, Mr. Hillwig left comments on a YouTube video
4 that demonstrated and featured the Universal Handgun Sight Pusher Tool manufactured and
5 sold by Mr. Dieu. In his comments, Mr. Hillwig publicly stated that, “He [Mr. Dieu] stole my
6 pattent [sic]” and that “He stole the design from Hillwig Tool LLC. Once the patent was
7 approved he stole the design and has made many counterfeits. He should be in jail.” A copy
8 of these comments left by Mr. Hillwig is attached as **Exhibit C**.

9 11. On or about April 24, 2017, Mr. Hillwig posted on his publicly accessible
10 website comments regarding Mr. Dieu and Mr. Dieu’s Universal Sight Pusher Tool. In
11 particular Mr. Hillig stated:

12 There is a guy on on eBay and Amazon that is selling a sight pusher that looks
13 almost identical to mine. He openly admitted to stealing my design as he has
14 done with many other products belonging to honest American citizens. He waits
15 until the patent is released and steals it. He own DD Maching in Washington
16 state. His internet presence is the name “pirate 4X4” fitting since he is a pirate.

17
18 12. On or about October 12, 2017, Mr. Hillwig again posted on his publicly
19 accessible website comments regarding Mr. Dieu and Mr. Dieu’s Universal Sight Pusher
20 Tool. In particular Mr. Hillwig stated:

21 Things are going fantastic. Got rid of a couple of low life’s that stole my patent
22 and claimed it as their own that sold the crappy counterfeit tool on Amazon! eBay
23 still allows these thieves to sell their counterfeit products without any desire to
24 help honest people. They are only interested in letting these folks sell their crap
25 so eBay makes money. Such a shame when money rules over doing the right
26 thing.
27

1 Copies of these comments from Mr. Hillwig's website are attached as **Exhibit D**.

2 13. On or about August 1, 2017, Mr. Hillwig contacted Amazon.com and filed a
3 formal complaint with Amazon to the effect that the Universal Sight Pusher Tool
4 manufactured and distributed by Mr. Dieu infringed the '413 Patent. As a result, Amazon de-
5 listed Mr. Dieu's Universal Sight Pusher Tool, thereby preventing sale of the tool through
6 Amazon and causing Mr. Dieu substantial loss of sales, revenues and profits.

7 14. The allegations that Mr. Dieu's manufacture, sale, offer for sale or other
8 distribution of his Universal Sight Pusher Tool infringe any claim of the '413 Patent are
9 without basis and false.

10 15. The Universal Sight Pusher Tool offered by Mr. Dieu and DD Machine is
11 based on, and substantially duplicates a design that was publicly known, used and sold in the
12 United States several years prior to the February 20, 2013 effective filing date of the '413
13 Patent. Attached as **Exhibit E** is a true and correct copy of an Internet website listing dated
14 December 8, 2011, showing a handgun sight pushing tool on which Mr. Dieu's Universal
15 Sight Pusher Tool is based. Mr. Dieu's Universal Sight Pusher Tool is substantially similar in
16 form and function to the sight pushing tool shown in **Exhibit E**.

17 16. To the extent the claims of the '413 Patent as construed so as to encompass the
18 Universal Sight Pusher Tool offered by Mr. Dieu, any such claim would be unpatentable
19 under 35 U.S.C. §§102(a)(1) and 102(b) in that the claimed invention was described in a
20 printed publication, was in public use, was on sale, and/or was otherwise available to the
21 public more than one year before the February 20, 2013 effective filing date of the invention
22 claimed in the '413 Patent.

23 17. To the extent the claims of the '413 Patent are construed to require structure(s)
24 other than that shown in **Exhibit E**, the Universal Sight Pusher Tool offered by Mr. Dieu does
25 not include such structure and, therefore, does not infringe any such claim of the '413 Patent
26 under 35 U.S.C. §271 or otherwise.
27

1 18. Because no valid claim (if any) of the '413 Patent is or can be infringed by the
 2 Universal Sight Pusher Tool offered by Mr. Dieu, the public claims by Mr. Hillwig and/or
 3 Hillwig Tool that the tool infringes the '413 Patent are false, fraudulent and detrimental to Mr.
 4 Dieu's business.

5 19. Because no valid claim (if any) of the '413 Patent is or can be infringed by the
 6 Universal Sight Pusher Tool offered by Mr. Dieu, the public claims by Mr. Hillwig and/or
 7 Hillwig Tool that Mr. Dieu "stole" Mr. Hillwig's patent are false, fraudulent and detrimental
 8 to Mr. Dieu's business.

9 20. On or about April 2, 2015, after receiving the March 24, 2015 letter from Mr.
 10 Hillwig's counsel, Mr. Dieu telephoned and spoke with Mr. Hillwig's counsel. During that
 11 conference, Mr. Dieu informed counsel of the facts stated in paragraph 15 above and, in
 12 particular, that Mr. Dieu was manufacturing a product that had long been prior art to the '413
 13 Patent. As a result, any subsequent claims of infringement by Mr. Hillwig were made with
 14 knowledge of the facts stated in Paragraph 15 above.

15 21. As a result of the aforementioned March 24, 2015 letter sent on behalf of Mr.
 16 Hillwig and Hillwig Tool, combined with the ongoing and continuing statements by Mr.
 17 Hillwig that Mr. Dieu is infringing the '413 Patent and that Mr. Hillwig will see Mr. Dieu in
 18 court, Mr. Dieu has a reasonable fear and apprehension that patent infringement litigation will
 19 be brought against him. An actual justiciable controversy therefore exists between the parties.

20 COUNT I

21 **Declaratory judgment of patent invalidity of United States Patent No. 8,910,413**

22 22. Mr. Dieu hereby repeats and incorporates by reference Paragraphs 1-21 above
 23 as if fully set forth herein.

24 23. Because the Universal Sight Pusher Tool offered by Mr. Dieu and DD
 25 Machine is based on, and substantially duplicates the design shown in **Exhibit E**, which
 26 design was publicly known, used and sold in the United States at least as early as December 8,
 27 2011 and more than one year prior to the February 20, 2013 effective filing date of the '413

1 Patent, and claim of the '413 Patent construed to encompass Mr. Dieu's Universal Sight
 2 Pusher Tool would be invalid under 35 U.S.C. §§102(a)(1) and 102(b).

3 COUNT II

4 Declaratory judgment of non-infringement of United States Design Patent No. 8,910,413

5 24. Mr. Dieu hereby repeats and incorporates by reference Paragraphs 1-23 above
 6 as if fully set forth herein.

7 25. To the extent the claims of the '413 Patent are construed to require structure(s)
 8 other than that shown in **Exhibit E**, the Universal Sight Pusher Tool offered by Mr. Dieu does
 9 not include such structure and, therefore, does not infringe any such claim of the '413 Patent
 10 under 35 U.S.C. §271 or otherwise.

11 26. Because Mr. Dieu does not make, import, sell, offer sale or use a sight pushing
 12 tool having each of the elements recited by one or more claims of the '413 Patent, Mr. Dieu
 13 does not infringe any valid claim of the '413 Patent under 35 U.S.C. §271 or otherwise.

14 COUNT III

15 False or Misleading Representation of Fact Under 15 U.S.C. § 1125(a)

16 27. Mr. Dieu hereby repeats and incorporates by reference Paragraphs 1-26 above
 17 as if fully set forth herein.

18 28. By falsely representing to Amazon.com that certain Universal Sight Pusher
 19 Tools offered for sale by Mr. Dieu through Amazon.com infringe one or more claims of the
 20 '413 Patent Mr. Hillwig and/or Hillwig Tool, LLC knowingly and willfully made false and/or
 21 misleading representations of fact regarding the nature of Mr. Dieu's products, which false
 22 and/or misleading representations had the effect of removing such products' listing at
 23 Amazon.com, causing loss of sales and other harm to Mr. Dieu. Such willful actions on the
 24 part of Mr. Hillwig and/or Hillwig Tool, LLC are in violation of 15 U.S.C. § 1125(a).

COUNT IV

Common Law Fraud

29. Mr. Dieu hereby repeats and incorporates by reference Paragraphs 1-28 above as if fully set forth herein.

30. By falsely representing to Amazon.com that certain Universal Sight Pusher Tools offered for sale by Mr. Dieu through Amazon.com infringe one or more claims of the '413 Patent Mr. Hillwig and/or Hillwig Tool, LLC knowingly and willfully made false and/or misleading representations of fact regarding the nature of Mr. Dieu's products, which false and/or misleading representations had the effect of removing such products' listing at Amazon.com, causing loss of sales and other harm to Mr. Dieu. Such willful actions on the part of Mr. Hillwig and/or Hillwig Tool, LLC constitute fraud under the common law of the State of Washington.

COUNT V

Unfair Competition

31. Mr. Dieu hereby repeats and incorporates by reference Paragraphs 1-30 above as if fully set forth herein.

32. By falsely representing to Amazon.com that certain Universal Sight Pusher Tools offered for sale by Mr. Dieu through Amazon.com infringe one or more claims of the '413 Patent Mr. Hillwig and/or Hillwig Tool, LLC knowingly and willfully made false and/or misleading representations of fact regarding the nature of Mr. Dieu's products, which false and/or misleading representations had the effect of removing such products' listing at Amazon.com, causing loss of sales and other harm to Mr. Dieu. Such willful actions on the part of Mr. Hillwig and/or Hillwig Tool, LLC constitute unfair competition in violation of the laws of the State of Washington and in particular RCW Chapter 19.86.

PRAYER FOR RELIEF

WHEREFORE, Mr. Dieu asks this Court to enter judgment against Defendants Mr. Hillwig and Hillwig Tool LLC and against their subsidiaries, affiliates, agents, servants, employees and all persons in active concert or participation with it granting the following relief:

A. A declaration that any claim of Defendants' United States Patent No. 8,910,413 construed to encompass any Universal Sight Pusher Tool made, imported, sold, offered for sale or used by Mr. Dieu is invalid as claiming subject matter in the prior art;

B. A declaration that none of the Universal Sight Pusher Tools made, imported, sold, offered for sale or used by Mr. Dieu infringes any valid claim of Defendant's United States Patent No. 8,910,413;

C. A finding that the false and misleading statements of Mr. Hillwig and/of Hillwig Tool regarding Mr. Dieu and the products he offers constitute a violation of Section 43(a) of the Lanham Act (15.U.S.C. §1125(a)), thereby entitling Mr. Dieu to compensation adequate to compensate him for damages suffered as a result, including but not limited to all remedies specified under 15 U.S.C. § 1117(a);

D. A finding that the false and misleading statements of Mr. Hillwig and/of Hillwig Tool regarding Mr. Dieu and the products he offers constitute common law fraud under the common law of the State of Washington, thereby entitling Mr. Dieu to compensation adequate to compensate him for damages suffered as a result;

E. A finding that the false and misleading statements of Mr. Hillwig and/of Hillwig Tool regarding Mr. Dieu and the products he offers constitute unfair competition in violation of RCW Chapter 19.86 of the laws of the State of Washington, thereby entitling Mr. Dieu to compensation adequate to compensate him for damages suffered as a result;

F. A finding that this case is exceptional and an award to Mr. Dieu of his attorneys' fees and costs as provided by 35 U.S.C. § 284;

1 G. A finding that the false and misleading statements of Mr. Hillwig and/or
2 Hillwig Tool LLC were made knowingly and intentionally, thereby entitling Mr. Dieu to
3 enhanced damages under 35 U.S.C. § 284 as well as under 15 U.S.C. § 1117(a);

4 H. A permanent injunction prohibiting further allegations of infringement or other
5 false statements on the part of Mr. Hillwig and/or Hillwig Tool LLC against Mr. Dieu; and

6 I. Such other and further relief as this Court or a jury may deem proper and just.

7 **JURY DEMAND**

8 Mr. Dieu demands a trial by jury on all issues presented in this Complaint.

9
10 Dated this 11th day of April, 2018.

11 Respectfully submitted,

12
13 /s/ Philip P. Mann
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