

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF ARKANSAS

US DISTRICT COURT
WESTERN DIST ARKANSAS
FILED
12/07/2018

ARCUS HUNTING, LLC,

Plaintiff,

v.

THE GYDE GROUP LLC,

Defendant.

Case No. 18-5244 TLB

COMPLAINT AND JURY DEMAND

Plaintiff, Arcus Hunting, LLC (“Arcus”), for its complaint against Defendant, The Gyde Group (“TGG”), states:

Parties

1. Arcus is a company duly organized and existing under the laws of the State of Delaware and having its principal place of business at 14161 Lake Forest Drive, Unit A, Covington, GA 30014.
2. Upon information and belief, TGG is an Arkansas company with a principal place of business at 5211 Village Parkway, Rogers, AR 72758.

Jurisdiction and Venue

3. This is an action arising under the patent laws, Title 35, United States Code, for TGG’s infringement of U.S. Patent No. 10,114,036 (the “’036 Patent”).
4. This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).
5. This Court has personal jurisdiction over TGG because, on information and belief, TGG is incorporated in Arkansas, regularly conducts business in Arkansas, and has

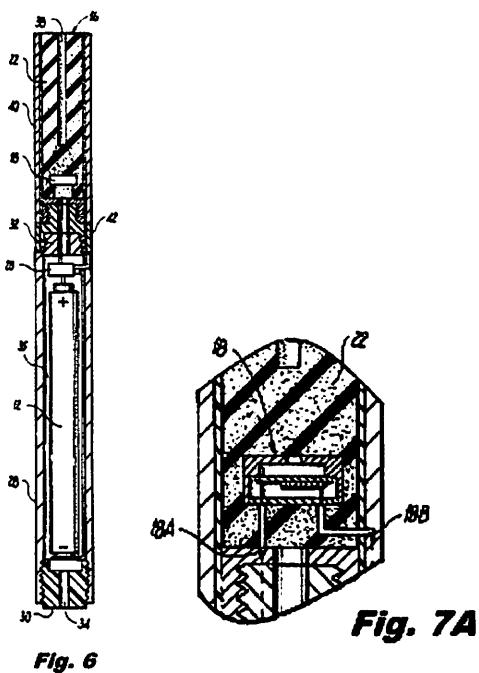
committed infringing acts within Arkansas, including making, selling, offering for sale, using, and/or importing products that infringe the '036 Patent.

6. Venue is proper in this District under 28 U.S.C. §§ 1391(b–c) and 1400(b) because TGG is incorporated in this district and, therefore, “resides” in the Western District of Arkansas according to federal law. Moreover, upon information and belief, TGG has a regular and established place of business in this judicial district because its principal place of business is within this judicial district and, as described herein, TGG has committed acts of infringement in this judicial district by making, selling, offering for sale, using, and/or importing products that infringe the '036 Patent.

Background

7. Arcus is in the business of designing, manufacturing, and selling hunting-related products. Arcus is the owner of U.S. Patent No. 10,114,036, entitled “Portable Hunting Device for Generating Scented Vapor.” The '036 Patent was duly and legally issued on October 30, 2018, by the United States Patent and Trademark Office. A copy of the '036 Patent is attached as Exhibit A.

8. The claims of the '036 Patent are directed to a device and a method for attracting animals and/or disguising human scent during hunting, with the device including a piezoelectric element for vaporizing an agent to produce a scented vapor. An exemplary embodiment of such a device for attracting animals and/or disguising human scent is included in Figures 6 and 7a of the '036 Patent, which are reproduced below.



9. Arcus is informed and believes, and therefore alleges, that TGG is making, using, selling, offering to sell, and/or importing in and/or into the United States, scent dispersion devices that infringe upon the subject matter claimed in Arcus' '036 Patent. For example, TGG is selling and/or offering to sell scent dispersion devices under the names "Hunter's Kloak" and "Rut Rouser" via the website hunterskloak.com. Images of a Hunter's Kloak device and a Rut Rouser device taken from TGG's website are reproduced below.



10. Upon information and belief, TGG's Hunter's Kloak and Rut Rouser devices, as illustrated in the images above, infringe one or more claims of the '036 Patent. For example, upon information and belief, the Hunter's Kloak and Rut Rouser devices each infringes, at least, independent claims 1, 17, and 21 of the '036 Patent because the Hunter's Kloak and Rut Rouser devices each include every limitation required by such independent claims 1, 17, and 21. To further illustrate such infringement, a claim chart is attached hereto as Exhibit B, and incorporated by reference herein, which illustrates how TGG's Hunter's Kloak device and Rut Rouser device each infringes every element required by independent claims 1, 17, and 21 of the '036 Patent. The attached claim chart incorporates images and text related to the accused Hunter's Kloak and Rut Rouser devices taken from TGG's website, as well as photographs taken of a Hunter's Kloak device and a Rut Rouser device purchased by Arcus.

11. TGG's making, using, selling or offering for sale, and/or importation into the United States of Hunter's Kloak and Rut Rouser devices is without authorization or license from Arcus.

12. TGG has received written notice of the '036 Patent by way of an original November 20, 2018 letter and email sent to Mr. Mike Czuba. Counsel for TGG responded to this original letter via email on November 30, 2018, verifying receipt of the original letter. As such, TGG was aware of the '036 Patent since at least November 30, 2018. Nevertheless, TGG continues to make, use, sell or offer to sell, and/or import into the United Hunter's Kloak and Rut Rouser devices that it knows infringe the '036 Patent.

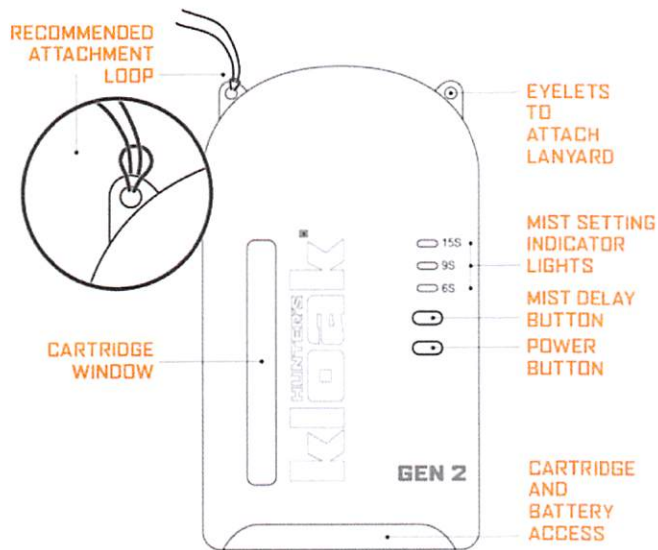
13. Upon information and belief, TGG is inducing others to infringe one or more claims of the '036 Patent because TGG actively encourages others to directly infringe claims of the '036 Patent. For example, independent claim 21 of the '036 Patent is a method claim that requires, *inter alia*, a user to atomize a scented fluid using a piezo element. TGG's marketing materials for its Hunter's Kloak and Rut Rouser devices, as provided on TGG's website, instruct and encourage purchasers of the Hunter's Kloak and Rut Rouser devices to perform such atomizing step, knowing that such step will result in direct infringement of the '036 Patent. Exemplary images taken from TGG's website are reproduced below to illustrate how TGG's marketing materials encourage acts from purchasers and/or end users, with respect to the Hunter's Kloak and Rut Rouser devices, that TGG knows will result in direct patent infringement of the '036 Patent.

HUNTER'S KLOAK[®] GEN 2 INSTRUCTIONS

- **Before first use**, please remove cap from Hunter's Kloak[®] Scent Cartridge. Then insert Scent Cartridge into mister with the warnings facing front.
- **Turn Mister On/Off**. Press and release power button.
- **Operate Mister**. Press and release time button to select setting of your choice.

MIST SETTINGS:

The Hunter's Kloak[®] Mister can be **set on 6, 9 and 15 second delays**.

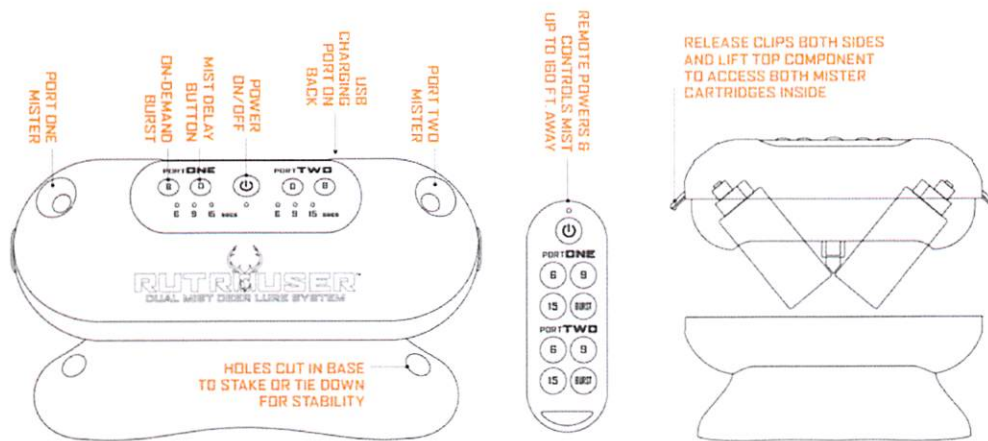


RUT ROUSER™ DUAL MISTER INSTRUCTIONS

- **Turn mister on/off.** Press and release power button. Green LED indicates the system is on.
- **Operate Mister.** For each Port, press the Mist Delay (D) button and release until correct mist setting is chosen. For on-demand bursts, press and hold the Burst (B) button release a burst of mist.

MIST SETTINGS:

The Hunter's Kloak® Mister can be **set on 6, 9 and 15 second delays**. Other on-device buttons displays the battery level and burst options. The remote also performs mist delays and on-demand bursts.



Count I – Patent Infringement

14. Arcus incorporates by reference and re-alleges the allegations in Paragraphs 1-13, above, as if fully set forth herein.

15. Arcus owns by assignment all right, title, and interest in and to the '036 Patent, including full rights to recover past and future damages thereunder.

16. Upon information and belief, TGG through its respective agents, employees or affiliates, has been and currently is committing acts of direct infringement of the '036 Patent by making, importing, using, selling, and/or offering to sell scent dispersion devices, including the Hunter's Kloak and Rut Rouser devices discussed above, in the United States that are covered by one or more claims of the '036 Patent.

17. Upon information and belief, TGG has induced infringement of the '036 Patent because, with knowledge of the '036 Patent, TGG intentionally and actively induced purchasers and other end users of TGG's Hunter's Kloak and Rut Rouser devices to use the devices in a manner that directly infringes the '036 Patent with specific intent that they do so. Thus, TGG's conduct amounts to active inducement of infringement of the '036 Patent in violation of 35 U.S.C. § 271(b).

18. The use of the Hunter's Kloak and Rut Rouser devices for their intended purpose constitutes a material part of the invention claimed in the '036 Patent. The Hunter's Kloak and Rut Rouser devices are not a staple article or commodity of commerce suitable for substantial non-infringing use. Because TGG knows the Hunter's Kloak and Rut Rouser devices are especially made for use in a manner that directly infringes the '036 Patent, TGG's offers to sell and sales of the Hunter's Kloak and Rut Rouser devices in the United States to customers and other end users constitutes contributory infringement of the '036 Patent in violation of 35 U.S.C. § 271(c).

19. Arcus has been, and continues to be, greatly damaged by reason of these acts of infringement and, upon information and belief, TGG will continue to infringe the '036 Patent.

20. Upon information and belief, TGG has deliberately and willfully infringed upon Arcus' exclusive rights under the '036 Patent, with full notice and knowledge thereof. Upon information and belief, TGG has acted despite an objectively high likelihood that its actions constitute infringement of the '036 Patent, and knew or should have known of that objectively high risk at least as of November 30, 2018.

21. Upon information and belief, TGG, from its infringing activities, has received and will continue to receive gains, profits and advantages, in an amount not presently known to Arcus.

22. Arcus will suffer irreparable harm in its trade and business as a result of TGG's infringement of the '036 Patent, for which Arcus is entitled to both preliminary and permanent injunctive relief pursuant to 35 U.S.C. § 283.

23. Arcus has suffered and will continue to suffer monetary damages, in an amount not yet presently known, as a result of TGG's infringement of the '036 Patent.

24. Arcus is entitled to monetary damages pursuant to 35 U.S.C. § 284 in an amount to be proven at trial.

Prayer for Relief

Based on the foregoing, Arcus prays for judgment against TGG as follows:

- A. A finding that TGG has directly infringed one or more claims of the '036 Patent under 35 U.S.C. § 271(a).
- B. A finding that TGG has indirectly infringed of one or more claims of the '036 Patent under 35 U.S.C. §§ 271(b) or (c).
- C. An order enjoining TGG and its officers, directors, managers, employees, affiliates, agents, representatives, parents, subsidiaries, successors, and assigns; those in privity with them; and all others aiding, abetting, or acting in concert or active participation with them from:
 - (1) making, using, selling, offering to sell in the United States, or importing into the United States, any product covered by the '036 Patent; or

- (2) otherwise directly or indirectly infringing the '036 Patent.
- D. Compensatory damages under 35 U.S.C. § 284.
- E. Treble damages under 35 U.S.C. § 284.
- F. Attorney fees under 35 U.S.C. § 285.
- G. Pre- and post-judgment interest.
- H. Costs of the action.
- I. Such other and further relief as allowed at law or in equity that the Court deems just.

Jury Demand

Arcus demands a trial by jury on all issues so triable.

December 7, 2018

Respectfully Submitted,



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