

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

PlasmaCAM, Inc., a Colorado corporation

Plaintiff,

v.

CNCElectronics, LLC, a Texas limited liability company; Fourhills Designs, LLC, a Texas limited liability company; Thomas Lee Caudle, an individual; Martha Jane Caudle, an individual

Defendants.

Civil Action No4:19-cv-00037-ALM

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff PlasmaCAM, Inc. (“**PlasmaCAM**”), for its First Amended Complaint against Defendants CNCElectronics, LLC (“**CNCElectronics**”), Fourhills Designs, LLC (“**Fourhills**”), Thomas Lee Caudle, and Martha Jane Caudle (CNCElectronics, Fourhills, and the Caudles collectively, “**Defendants**”), alleges as follows:

JURISDICTION AND VENUE

1. This action arises under the patent laws of the United States, Title 35, United States Code.

2. This court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b).

4. This court has personal jurisdiction over Defendants because Defendants reside in and have their regular and established places of business within this district, regularly conduct business within this district, and have committed the acts of patent infringement alleged herein within this district.

PARTIES

5. PlasmaCAM is a Colorado corporation with its principal place of business in the State of Colorado, Pueblo County. PlasmaCAM operates a business manufacturing and selling state-of-the-art, plasma-cutting tables and operative software across the United States and internationally.

6. Defendant CNCElectronics is a limited liability company formed under the laws of Texas and has its principal place of business in Whiteright, Texas.

7. Defendant Fourhills is a limited liability company recently formed under the laws of Texas and lists its business address with the Texas Secretary of State as 9900 Spectrum Dr., Austin, TX 78717-4555. Upon information and belief however, its actual principal place of business is in Whiteright, Texas.

8. Upon information and belief, Defendant Thomas Lee Caudle is an individual and resident of the state of Texas who has his principal place of business in Whiteright, Texas.

9. Upon information and belief, Defendant Martha Jane Caudle is an individual and resident of the state of Texas who has her principal place of business in Whiteright, Texas.

THE ASSERTED PATENT

10. United States Patent Number 7,071,441 (the “**‘441 Patent’**”), entitled “CUTTING SYSTEM CONTROLS, INCLUDING HEIGHT CONTROL,” was duly and legally issued on July 4, 2006, and names Jason Bulle as the inventor. Attached as **Exhibit A** is a true and correct copy of the ‘441 Patent.

11. NCT-146 LLC is the sole owner of the entire right, title, and interest in the ‘441 Patent and is the licensor thereof.

12. PlasmaCAM holds an exclusive license under the ‘441 Patent, including the right to make and have made, use, offer for sale, and sell products covered by the ‘441 Patent, and the right to assert, defend, and enforce the ‘441 Patent.

13. The ‘441 Patent contains 27 claims, of which four, Claims 1, 12, 15, and 20, are independent claims, and the remaining claims are dependent claims. Among the independent claims of the ‘441 Patent, Claim 1 discloses:

A cutting system comprising:

a plasma cutting torch reciprocally movable relative to a work piece along a Z-axis generally perpendicular to the work piece, the torch being connectable to a power source and providing an arc voltage during cutting, the arc voltage being proportional to a distance between the torch and the work piece;

an X-axis reciprocal driver and a Y-axis reciprocal driver for moving the torch horizontally along any prescribed path on the work piece;

an electrically operable Z-axis reciprocal driver connected to the plasma cutting torch for reciprocally moving the plasma cutting torch along the Z-axis;

a controller including a microprocessor coupling the controller to the X-axis reciprocal driver, the Y-axis reciprocal driver, and the Z-axis reciprocal driver, the controller having individually adjustable settings including a climb zone setting, a dive zone setting, and a selected rate setting, Z-axis driver speed is increased at the selected rate in the selected climb zone and the selected dive zone, and the controller further includes a maximum climb rate setting greater than the selected rate setting and a maximum dive rate setting greater than the selected rate setting for controlling the Z-axis driver speed outside the climb zone and dive zone, respectively, to tune the cutting system for a fast response without creating an oscillation condition; and

an electrical height control feedback circuit connected to the plasma torch and the driver to sense the arc voltage and actuate the driver to move the plasma cutting torch to maintain the arc voltage within a preset limit, the feedback circuit is further connected to the controller for actuating the driver at a rate in accordance with tuning of the cutting system.

DEFENDANTS' INFRINGING ACTIVITIES

14. Upon information and belief, Defendants currently own and operate an e-commerce website currently found at www.candcnc.net, through which they use, offer for sale,

and sell certain “Plug-n-Run Systems” and other plasma cutting systems, components thereof, software and related products (collectively, the “**Products**”).

15. Defendants have and continue to infringe the ‘441 Patent by using a plasma cutting system or systems in the United States that embody or use the inventions claimed in the ‘441 Patent, including, without limitation, those in Claims 1, 15, and 20.

16. Evidence of Defendants’ infringement can be found within Defendants’ own product manuals and Defendants’ videos currently found at <https://www.candcnc.com/videos/> and on YouTube.

17. Additionally, Defendants have been and are actively and knowingly inducing infringement of the ‘441 Patent by offering and selling the Products, along with how-to instructions, manuals, and support materials for same, to Defendants’ customers who then build and use cutting systems that infringe the ‘441 Patent.

18. On May 21, 2018, PlasmaCAM, through counsel, sent Defendants a demand letter via FedEx. Attached as **Exhibit B** is a true and correct copy of the demand letter.

19. The demand letter was delivered to Defendants in Whiteright, Texas and signed for by Defendants’ representative on May 23, 2018.

20. The demand letter included a copy of the ‘441 Patent and informed Defendants, among other things, of PlasmaCAM’s legal rights in and to the ‘441 Patent and of Defendants’ activities alleged to infringe the ‘441 Patent both directly and through inducement.

21. Defendants ignored the demand letter and have continued to infringe the ‘441 Patent both directly and through inducement.

22. At least because Defendants received PlasmaCAM's demand letter, Defendants have known of the existence of the '441 Patent, and Defendants' acts of infringement have been willful and in disregard for the '441 Patent, without any reasonable basis for believing that they had a right to engage in the infringing conduct.

COUNT ONE: PATENT INFRINGEMENT (35 U.S.C. § 271(a))

23. PlasmaCAM repeats and re-alleges all paragraphs of this Complaint as if fully set forth herein.

24. Defendants have been and are infringing the '441 Patent by using a plasma cutting system or systems in the United States, including within this judicial district, that embody or use the inventions claimed in the '441 Patent, in violation of 35 U.S.C. § 271(a).

25. Defendants' infringement has been, and continues to be knowing, intentional, and willful.

26. Defendants' acts of infringement of the '441 Patent have caused and will continue to cause PlasmaCAM damages for which PlasmaCAM is entitled to compensation pursuant to 35 U.S.C. § 284.

27. Defendants' acts of infringement of the '441 Patent have caused and will continue to cause PlasmaCAM immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. PlasmaCAM has no adequate remedy at law.

28. This case is exceptional and, therefore, PlasmaCAM is entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT TWO: INDUCING PATENT INFRINGEMENT (35 U.S.C. § 271(b))

29. PlasmaCAM repeats and re-alleges all paragraphs of this Complaint as if fully set forth herein.

30. Defendants have been and are inducing infringement of the '441 Patent by actively and knowingly offering and selling one or more of the Products, along with how-to instructions, manuals, and support materials for same, to Defendants' customers who then build and use cutting systems that infringe the '441 Patent, in violation of 35 U.S.C. § 271(b).

31. Knowing of the existence of the '411 Patent, Defendants instructed and/or caused end users to infringe the '411 Patent with the specific intent that end-users would infringe.

32. Defendants' infringement has been, and continues to be knowing, intentional, and willful.

33. Defendants' acts of infringement of the '441 Patent have caused and will continue to cause PlasmaCAM damages for which PlasmaCAM is entitled to compensation pursuant to 35 U.S.C. § 284.

34. Defendants' acts of infringement of the '441 Patent have caused and will continue to cause PlasmaCAM immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. PlasmaCAM has no adequate remedy at law.

35. This case is exceptional and, therefore, PlasmaCAM is entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

COUNT THREE: CONTRIBUTORY INFRINGEMENT (35 U.S.C. § 271(c))

36. PlasmaCAM repeats and re-alleges all paragraphs of this Complaint as if fully set forth herein.

37. End users who purchase plasma cutting systems from Defendants are directly infringing the '441 Patent.

38. Defendants have had knowledge of the '441 Patent at least since May 23, 2018.

39. Defendants' plasma cutting systems embody the inventions claimed in the '441 Patent, including, without limitation, those in Claims 1, 15, and 20.

40. Defendants' plasma cutting systems have no substantial noninfringing use.

41. Defendants' acts of infringement of the '441 Patent have caused and will continue to cause PlasmaCAM damages for which PlasmaCAM is entitled to compensation pursuant to 35 U.S.C. § 284.

42. Defendants' acts of infringement of the '441 Patent have caused and will continue to cause PlasmaCAM immediate and irreparable harm unless such infringing activities are enjoined by this Court pursuant to 35 U.S.C. § 283. PlasmaCAM has no adequate remedy at law.

43. This case is exceptional and, therefore, PlasmaCAM is entitled to an award of attorneys' fees pursuant to 35 U.S.C. § 285.

///

///

DEMAND FOR JURY TRIAL

PlasmaCAM requests a trial by jury of any issues so triable.

PRAYER FOR RELIEF

WHEREFORE, PlasmaCAM requests judgment against Defendants as follows:

1. Adjudging that Defendants have infringed and actively induced infringement of the '441 Patent, in violation of 35 U.S.C. § 271(a), (b) and (c);
2. Granting an injunction permanently enjoining Defendants, their employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all of those in active concert and participation with any of the foregoing persons or entities from infringing, contributing to the infringement of, or inducing infringement of the '441 Patent;
3. Ordering Defendants to account and pay damages to compensate PlasmaCAM for Defendants' infringement of the '441 Patent, including pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;
4. Ordering an accounting for any infringing sales not presented at trial and an award by the court of additional damages for any such infringing sales;
5. Ordering that the damages award be increased up to three times the actual amount assessed, pursuant to 35 U.S.C. § 284;
6. Declaring this case exceptional and awarding PlasmaCAM its reasonable attorneys' fees, pursuant to 35 U.S.C. § 285; and

7. Awarding such other and further relief as this Court deems just and proper.

Dated this 18th day of January, 2019.

JABURG & WILK, P.C.

/s/Michael B. Dvoren

Michael B. Dvoren, AZ Bar No. 027386
(Designated as Lead Attorney per LRCiv. 11)

E-mail: mbd@jaburgwilk.com

Maria Crimi Speth, AZ Bar No. 012574

(Pro Hac Vice pending)

E-mail: mcs@jaburgwilk.com

3200 N. Central Avenue, Suite 2000

Phoenix, AZ 85012

Telephone: (602) 248-1000

Fax: (602) 248-0522

Attorneys for Plaintiff PlasmaCAM, Inc.