

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

QubicaAMF Worldwide, LLC, Plaintiff, v. De Bowlingwacht B.V. and BCE B.V., Defendants.)))))))))))	Civil Action No. _____ JURY TRIAL DEMANDED
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COMPLAINT FOR DECLARATORY JUDGMENT OF NON-INFRINGEMENT

Plaintiff QubicaAMF Worldwide, LLC (hereinafter referred to as “QAMF”), through its undersigned counsel, brings this action against Defendants De Bowlingwacht B.V. (hereinafter referred to as “Bowlingwacht”) and BCE B.V. (hereinafter referred to as “BCE” and, collectively with Bowlingwacht, “Bowlingwacht/BCE”), and alleges as follows:

NATURE OF THE ACTION

1. This is an action for declaratory judgment under 28 U.S. C. §§ 2201 and 2202 that U.S. Design Patent No. D689,972 (“the ‘972 patent”) is not infringed by QAMF. A copy of the ‘972 patent is attached hereto as Exhibit “A”.

THE PARTIES

2. QAMF is a limited liability company organized and existing under the laws of the Commonwealth of Virginia.

3. QAMF has a principal place of business at 8100 AMF Drive, Mechanicsville, VA 23111.

4. On information and belief, Bowlingwacht is a private limited liability company organized under the laws of the Netherlands.

5. On information and belief, Bowlingwacht has a principal place of business at Withuisstraat 10, 4845 CA Wagenberg, Netherlands.

6. On information and belief, BCE is a private limited liability company organized under the laws of the Netherlands.

7. On information and belief, BCE has a principal place of business at Brasem 47, 4941 SE Raamsdonksveer, Netherlands.

8. On information and belief, Bowlingwacht/BCE are the owners of the '972 patent.

9. On information and believe, Bowlingwacht is the holding company of BCE.

JURISDICTION

10. This action arises under the Patent Laws of the United States, Title 35 of the United States Code, Sections 101 et seq., and the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202. An actual, substantial, and continuing justiciable controversy exists between QAMF and Bowlingwacht/BCE. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338.

11. Pursuant to 35 U.S.C. § 293: "Every patentee not residing in the United States may file in the Patent and Trademark Office a written designation stating the name and address

of a person residing with the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder [I]f no person has been designated, the United States District Court for the Eastern District of Virginia shall have jurisdiction ... to take any action respecting the patent or rights thereunder that it would have if the patentee were personally within the jurisdiction of the court.”

12. On information and belief, Bowlingwacht/BCE are the owners and/or assignees of United States patents including the ‘972 patent, and as Netherlands companies are a “patentee not residing in the United States” under 35 U.S.C. § 293 (and “patentee” as defined in 35 U.S.C. §100).

13. On information and belief, Bowlingwacht/BCE have not filed with the Patent and Trademark Office a “written designation stating the name and address of a person residing within the United States on whom may be served process or notice of proceedings affecting the patent or rights thereunder.” 35 U.S.C. § 293. Thus, Bowlingwacht/BCE are subject to personal jurisdiction in this Court.

VENUE

14. Venue is proper in this district pursuant to 28 U.S.C. § 1391 as Bowlingwacht/BCE is subject to personal jurisdiction in this Court under 35 U.S.C. § 293.

15. Venue is also proper because a substantial part of the events giving rise to the claim occurred in this district. QAMF has an office and numerous supporting people in the Commonwealth of Virginia who have knowledge relevant to the issues in this case.

FACTUAL BACKGROUND

16. QAMF manufactures and sells bowling related products. Among these products are bowling lanes and approaches to the bowling lanes (hereinafter referred to as bowling alleys) that QAMF manufactures in the United States and that QAMF sells, installs, repairs, or otherwise disposes of in the United States and worldwide.

17. The '972 patent is a design patent that has a single claim covering the ornamental design for a bowling alley as shown and described in the patent.

18. On information and belief, Bowlingwacht is the assignee of the '972 patent, as indicated on the face of the '972 patent and as evidenced by an assignment recorded with the United States Patent and Trademark Office on December 21, 2011.

19. On or about February 4, 2019, QAMF received a letter from Bowlingwacht/BCE's counsel, C.M. van den Reek, which stated that Bowlingwacht and BCE are Dutch limited liability companies, which are the owners of the '972 patent. Specifically, this letter stated, in relevant part, "The Dutch limited liability companies De Bowlingwacht B.V. and BCE B.V. have requested my assistance in the following matter. My clients are the owner of a United States Design Patent concerning a bowling alley. A copy of that patent registration [the '972 patent] is attached to this letter." A copy of this letter is attached hereto as Exhibit "B".

20. In the letter dated February 4, 2019, Bowlingwacht/BCE's counsel asserts, amongst other things, that "you [QAMF] have been distributing/placing/using bowling alleys that might be an infringement of said patent."

21. In the letter dated February 4, 2019, Bowlingwacht/BCE's counsel concludes by stating "[i]f my clients and I do not receive a response to this letter within 14 days from today, my clients will be forced to take legal measures to ensure their rights."

22. On or about February 14, 2019, QAMF's counsel sent a letter to Bowlingwacht/BCE's counsel stating that QAMF's products do not infringe the claim of the '972 patent. A copy of this letter is attached hereto as Exhibit "C".

23. On or about February 28, 2019, QAMF's counsel received an email reply from Bowlingwacht/BCE's counsel in which Bowlingwacht/BCE's counsel states "[a]fter careful consultation with my client, I have to inform you that my client does not agree that there is no infringement" "[y]our client therefore does infringe my client's patent and should cease and desist all use of infringing lanes immediately" and "[i]f your client is not willing to negotiate and does not cease to infringe my client's patent, my client will initiate injunction proceedings." A copy of this email is attached hereto as Exhibit "D".

24. On or about March 25, 2019, QAMF's counsel received an email from Bowlingwacht/BCE's counsel in which Bowlingwacht/BCE's counsel states "[s]ince your last email I have been so kind to give you the chance to consult with your client's CFO, but I have not received any further response. Please get back to me before the end of this week or I will have to advise my client to initiate court proceedings to stop the infringement your client is making." A copy of this email is attached hereto as Exhibit "E".

25. On or about April 1, 2019, QAMF's counsel received an email from Bowlingwacht/BCE's counsel in which Bowlingwacht/BCE's counsel states "[i]f your client

does not agree or if parties cannot reach an agreement, my client will be forced to initiate legal measures after all.” A copy of this email is attached hereto as Exhibit “F”.

26. On or about April 8, 2019, QAMF’s counsel received an email from Bowlingwacht/BCE’s counsel in which Bowlingwacht/BCE’s counsel states “I of course understand that your client needs some time to deliberate. Please note however that my client does not wish to delay things. Your client is infringing the patent every single day so an agreement will have to be reached soon in order to stop the infringement.” A copy of this email is attached hereto as Exhibit “G”.

27. As a result of these allegations of infringement and the many threats of litigation made by Bowlingwacht/BCE’s counsel against QAMF, there is an immediate and actual case or controversy between QAMF and Bowlingwacht/BCE regarding the non-infringement of the ‘972 patent as it pertains to QAMF’s manufacturing and sales activities in the United States.

28. QAMF denies that any of its products, including the QAMF bowling alley identified by Bowlingwacht/BCE’s counsel, infringes the claim of the ‘972 patent, directly or indirectly, contributorily or by inducement, and/or literally or under the doctrine of equivalents.

COUNT I – DECLARATORY JUDGMENT OF NON-INFRINGEMENT

29. QAMF restates and incorporates by reference each of the allegations in the preceding paragraphs of this complaint as is set forth in full herein.

30. Bowlingwacht/BCE have alleged and continue to allege that QAMF infringes the claim of the ‘972 patent, and have threatened QAMF with legal action based on the alleged infringement.

31. QAMF has not infringed and does not infringe the claim of the '972 patent.

32. In particular, QAMF has not and does not make, use, sell, offer for sale, or import any product or otherwise dispose of any product that infringes or contributes to any infringement, directly or indirectly, of the claim of the '972 patent either literally or under the doctrine of equivalents. QAMF further has not and does not induce any infringement of the claim of the '972 patent.

33. There is, therefore, an actual controversy between QAMF and Bowlingwacht/BCE as to whether QAMF has infringed and/or is infringing the claim of the '972 patent.

34. This justifiable and actual controversy is between parties having adverse legal interests and is of sufficient immediacy and reality to warrant issuance of a declaratory judgment under 28 U.S.C. § 2201 (a) as to the alleged infringement of the '972 patent by QAMF.

35. A judicial declaration is necessary and appropriate at this time so that the parties may proceed in accordance with their respective rights as determined by the Court.

36. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201, et seq., QAMF seeks a declaration that they do not infringe the claim of the '972 patent.

PRAYER FOR RELIEF

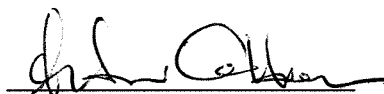
WHEREFORE, QAMF respectfully requests judgment be entered in its favor and against Bowlingwacht/BCE as follows:

- a. A declaration that QAMF has not and does not infringe, either directly or indirectly, contributorily or by inducement, the claim of the '972 patent, literally or under the doctrine of equivalents;
- b. A declaration that this case is exceptional under 35 U.S.C. § 285 and that QAMF is entitled to an award of costs, disbursements, and reasonable attorney fees in connection with this action; and
- c. Any such other and further relief as the Court may deem just and proper.

JURY DEMAND

QAMF requests a jury trial as to all matters so triable.

Respectfully submitted,



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Dated April 12, 2019