

1 Samuel Yu, Esq. (SBN 251636)
2 KAHANA & FELD LLP
3 2603 Main Street, Suite 350
4 Irvine, CA 92614
5 Telephone (949) 812-4781
6 Facsimile (949) 245-7597
7 E-mail: syu@kahanafeld.com

8 Attorneys for Plaintiffs B-5, Inc. and
9 B & T Industries, LLC
10

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA - EASTERN DIVISION**
13

14 B-5, INC., a Kansas corporation; and
15 B & T INDUSTRIES, LLC, a Kansas
16 limited liability company,

17 Plaintiffs,

18 v.

19 ACCU-TAC, LLC, a California
20 limited liability company; LUIS
21 FELIPE SALAZAR, an individual;
22 and DOES 1 through 50, inclusive,

23 Defendants.
24
25
26
27
28

Case No.: 5:20-cv-00532-PSG-KK

**FIRST AMENDED COMPLAINT
FOR:**

- (1) PATENT INFRINGEMENT OF
U.S. PATENT NO. 8,904,693; AND
(2) PATENT INFRINGEMENT OF
U.S. PATENT NO. 8,402,684**

DEMAND FOR JURY TRIAL

1 Plaintiffs B-5, INC. (“B-5”) and B & T, INDUSTRIES, LLC (“B&T”)
2 (collectively, “Plaintiffs”), hereby file this First Amended Complaint complaining
3 of the conduct of Defendants ACCU-TAC, LLC, LUIS FELIPE SALAZAR, and
4 DOES 1 through 50 (collectively, “Defendants”).

5 **PRELIMINARY STATEMENT**

6 1. Since 2010, when B&T introduced the ATLAS® bipod, it has become
7 the industry standard for a lightweight, strong bipod that has found favor in civilian,
8 law enforcement, and military riflemen around the world.

9 2. This is an action for patent infringement on two separate patents arising
10 under the Patent Act of the United States, Title 35, United States Code.

11 **JURISDICTION AND VENUE**

12 3. Federal question jurisdiction is conferred upon this Court pursuant to
13 28 U.S.C. §§ 1331 and 1338(a).

14 4. Personal jurisdiction over ACCU-TAC, LLC (hereinafter “ACCU-
15 TAC”) is proper in this Court because ACCU-TAC is a resident of the state of
16 California and, specifically, ACCU-TAC has its principal place of business in this
17 judicial district.

18 5. Personal Jurisdiction over Salazar is proper in this Court because
19 Salazar resides in this judicial district.

20 6. Venue in this Court is proper under 28 U.S.C. § 1400(b) because
21 ACCU-TAC is a California limited liability company that has its headquarters in
22 this judicial district and because Salazar resides in the state of California in this
23 judicial district.

24 **GENERAL ALLEGATIONS**

25 7. Plaintiff B-5, INC. is a Kansas corporation having its principal place of
26 business at 433 North Rock Island, Wichita, Kansas 67202.

27 8. Plaintiff B & T Industries, LLC is a Kansas limited liability company
28 having its principal place of business at 433 North Rock Island, Wichita, Kansas

1 67202.

2 9. Defendant ACCU-TAC, LLC is a California limited liability company
3 having its principal place of business in the County of San Bernardino and State of
4 California at 10309 Regis Court, Rancho Cucamonga, California 91730.

5 10. Defendant Luis Felipe Salazar is an individual residing in the County
6 of San Bernardino, State of California in Rancho Cucamonga, California. Upon
7 information and belief, Salazar is the sole owner and sole officer (President) of
8 ACCU-TAC, who directs and controls all operations of the company.

9 11. Defendants, DOES 1 through 50, inclusive, are sued herein under
10 fictitious names. Their true names and capacities are unknown to Plaintiff. When
11 their true names and capacities are ascertained, Plaintiff will amend this Complaint
12 by inserting their true names and capacities herein.

13 12. Upon information and belief, each of the fictitiously named defendants,
14 DOES 1 through 50, inclusive, is legally responsible in some manner for the
15 occurrences herein alleged, and that Plaintiff's damages as herein alleged were
16 legally caused by those defendants, and/or that each of the fictitiously named
17 defendants is responsible in some manner for the occurrences herein alleged, and
18 that Plaintiff's injuries as herein alleged were legally caused by such conduct.

19 13. Upon information and belief, Defendants in this action were and are the
20 agents, authorized representatives, joint venturers, partners, and/or alter egos of one
21 another, and in doing the acts alleged in this complaint, did so jointly and for a
22 common purpose, within the course and scope of his, her or its authority as such
23 agent, representative, joint venturer, partner, and/or alter ego, with the knowledge,
24 consent, permission, and ratification of each other.

25 **FACTS COMMON TO ALL CAUSES OF ACTION**

26 14. Since 2010, when B&T introduced the ATLAS® bipod, it has become
27 the industry standard for lightweight, strong bipod that has found favor in civilian,
28 law enforcement, and military riflemen around the world.

15. B-5 is the owner, by recorded assignment, of U.S. Patent No. 8,904,693, entitled "BIPOD FIREARM SUPPORT" ("the '693 patent"), which was issued by the U.S. Patent and Trademark Office on December 9, 2014. A true and correct copy of the '693 patent is attached hereto as Exhibit A and incorporated herein by reference.

16. Generally, the '693 patent discloses a firearm support bipod for supporting the forward part of a firearm that includes a clamp portion, a pivot body, and a pair of leg assemblies. The legs are independently adjustable and portions of the body pivot, permitting relative movement there between at least about a generally longitudinal axis, allowing the cant (i.e., tilt) of the firearm to be adjusted.

Figure 3A of the '693 patent is reproduced below:

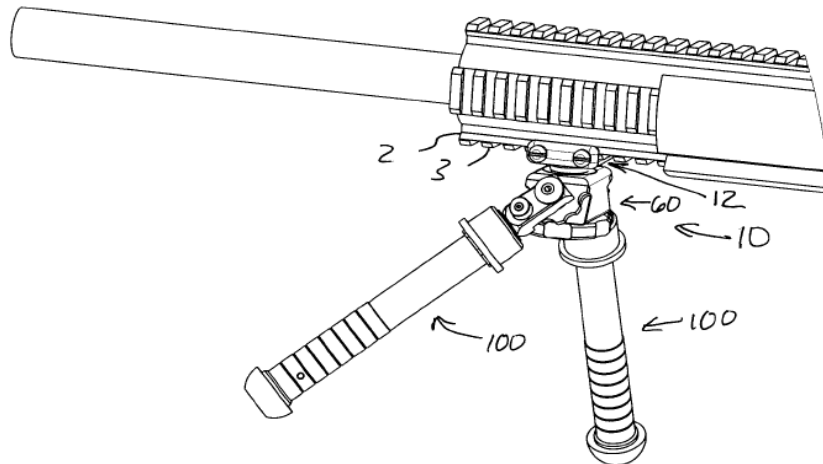


FIG. 3A

17. The '693 patent includes independent claim 1, among others, which recites:

A bipod weapon support comprising: a connector having a first portion mountable to the weapon and a second portion on which each of two legs are attached on opposing sides thereof, respectively; the connector including a pivot support between the first and second portions permitting relative movement there between at least about a generally longitudinal axis; and,

each leg is independently mounted to and movable on the opposing sides of the second portion by a leg mount assembly including a pivot connection that is biased in place, each of the opposing sides having a

plurality of recesses arranged there about, each leg mount assembly further including a corresponding structure that can mate with and be releasably secured within one of the plurality of recesses so that when the structure is moved relative to a biased condition the leg can be moved around the pivot connection and the corresponding structure can be positioned in one of the plurality of recesses so as to permit each leg to be independently stowable in a rearward manner adjacent the weapon, stowable in a forward manner adjacent the weapon, and adjustably locked in any one of a plurality of positions there between. See Exhibit A, col. 6, ll. 24-46.

18. B-5 is the owner, by recorded assignment, of U.S. Patent No. 8,402,684, entitled "BIPOD FIREARM SUPPORT" ("the '684 patent"), which was issued by the U.S. Patent and Trademark Office on March 28, 2006. A true and correct copy of the '684 patent is attached hereto as Exhibit B and incorporated herein by reference.

19. Generally, the '684 patent discloses a firearm support bipod for supporting the forward part of a firearm that includes a clamp portion, a pivot body, and a pair of leg assemblies. The legs are independently adjustable and portions of the body pivot, permitting movement along vertical and longitudinal axes, allowing both panning (i.e., side-to-side movement) and adjustment of cant (i.e., tilt). Figure 3A of the '684 patent is reproduced below:

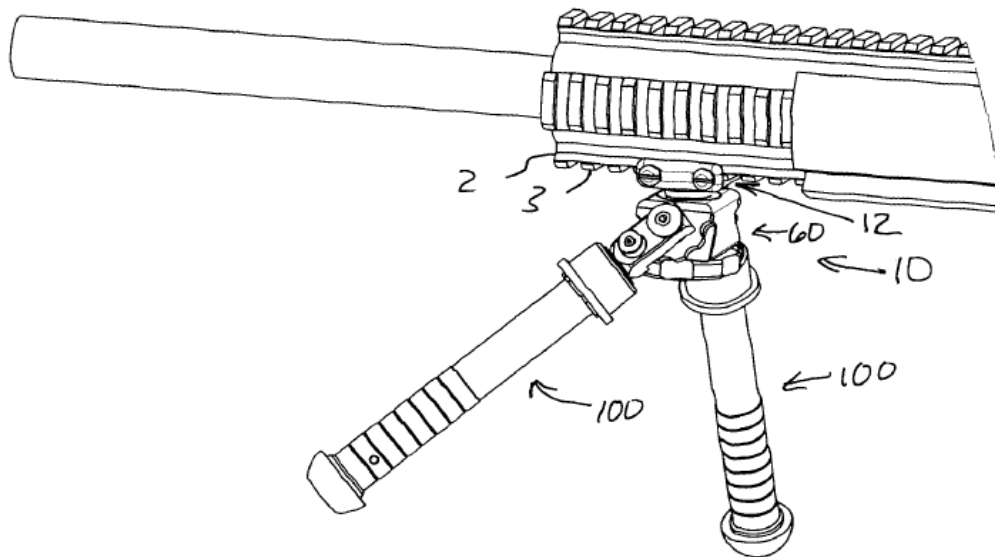


FIG. 3A

1 20. The '684 patent includes, among others, independent claim 1, which
2 recites:

3 A bipod weapon support comprising: a connector having a first portion
4 mountable to the weapon and a second portion on which each of two
legs are attached on opposing sides thereof, respectively;

5 the connector including a pivot support between the first and second
6 portions permitting relative movement there between and along vertical
and longitudinal axes; and,

7 each leg is independently mounted to and movable on the opposing
8 sides of the second portion by a leg mount assembly including a pivot
connection that is biased in place, each of the opposing sides having a
9 plurality of recesses arranged there about, each leg mount assembly
further including a corresponding structure that can mate with and be
10 releasably secured within one of the plurality of recesses so that when
the structure is moved relative to a biased condition the leg can be
11 moved around the pivot connection and the corresponding structure can
be positioned in one of the plurality of recesses so as to permit each leg
12 to be independently stowable in a rearward manner adjacent the
weapon, stowable in a forward manner adjacent the weapon, and
13 adjustably locked in any one of a plurality of positions there between.
See Exhibit B, col. 6, ll. 22-45

14 21. B&T sells bipods implementing the technology covered by the '693 and
15 '684 patents under the registered trademark ATLAS®.

16 22. B&T has licensed the '693 and '684 patents from B-5.

17 23. Upon information and belief, ACCU-TAC is, among other activities,
18 engaged in the manufacture, use, sale, offer for sale and/or importation of bipods,
19 including, for example, the BR-4 G2 Bolt Action Bipod ("BR-4 G2 Bipod") and the
20 FC-G2 F-Class Bipod ("FC- G2 Bipod"), among other similar models.

21 24. Upon information and belief, the BR-4 G2 Bipod contains each and
22 every element of at least claim 1 of the '693 patent, and, therefore, infringes at least
23 one claim of the '693 patent.

24 25. Upon information and belief, the FC-G2 Bipod contains each and every
25 element of at least claim 1 of the '684 patent, and, therefore, infringes at least one
26 claim of the '684 patent.

27 26. ACCU-TAC and Salazar were contacted by letter dated March 22,
28 2016, putting them on actual notice of Plaintiffs' patent rights. *See Exhibit C. This*

1 notice included the '684 and '693 patents. Thus, Salazar knew the continued
2 manufacture and sale of the bipods was an infringement and, as sole owner and sole
3 officer, recklessly induced the company to continue infringing the '684 and '693
4 patents. Salazar acted culpably in that he actively and knowingly aided and abetted
5 the company's infringement.

6 27. ACCU-TAC and Salazar were again contacted by letter dated March
7 14, 2019, alleging infringement of the '684 and '693 patents. *See* Exhibit D.

8 28. Upon information and belief, at Salazar's sole direction, ACCU-TAC
9 has continued and continues to infringe the '684 and '693 patents willfully.

10 29. Salazar's acts constitute infringement under 35 U.S.C. § 271(b).

11 **FIRST CAUSE OF ACTION**

12 **Patent Infringement of U. S. Patent No. 8,904,693**

13 **(Against All Defendants)**

14 30. The allegations of the preceding paragraphs are incorporated by
15 reference as though fully set forth herein.

16 31. This is a cause of action for direct patent infringement under 35 U.S.C.
17 § 271(a) and indirect infringement under 35 U.S.C. § 271(b).

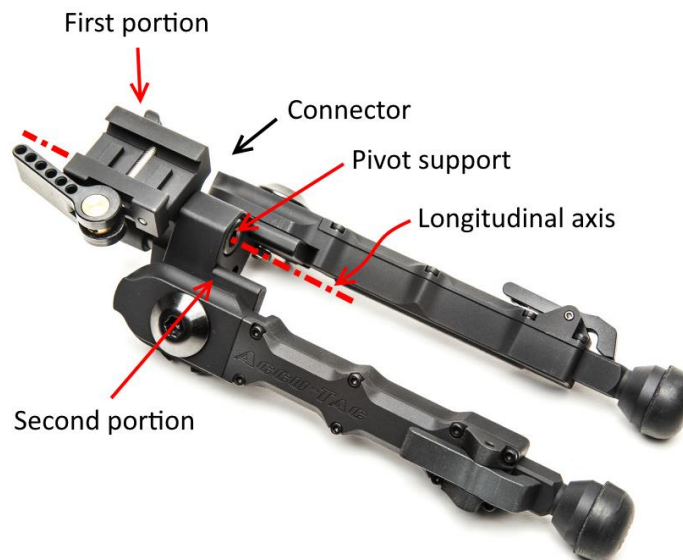
18 32. Upon information and belief, ACCU-TAC, at the direction of Salazar,
19 infringed, and is continuing to infringe, at least claim 1 of the '693 patent by its
20 manufacture, use, offer for sale, sale, and/or importation into the United States of
21 bipods, including, but not limited to, that referred to as the BR-4 G2 Bipod.

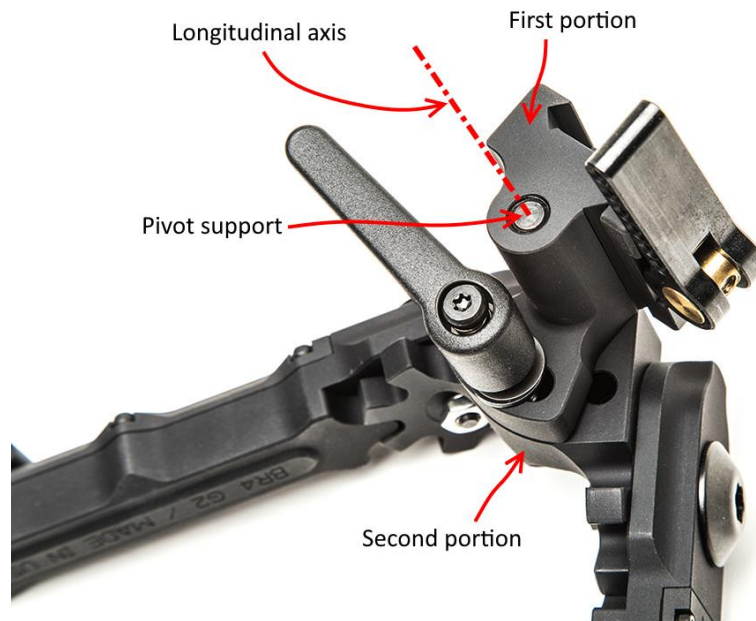
22 33. A comparison of photographic exemplars of the BR-4 G2 Bipod with
23 the elements of claim 1 above demonstrates that the BR-4 G2 Bipod infringes at
24 least claim 1 of the '693 patent. As can be seen in the images of the BR-4 G2 Bipod
25 below, the BR-4 G2 Bipod is a bipod weapon support that includes a connector
26 having a first portion mountable to the weapon and a second portion on which each
27 of two legs are attached on opposing sides thereof, respectively, as shown below:
28



34. Marketing materials published by ACCU-TAC for the BR-4 G2 Bipod state: “Our quick detach rail mount is simple, quick, and very secure. The quick detach attaches to a 1913 Picatinny rail and mounts in seconds without the need to use extra tools for tightening” and “The BR-4 G2 has the ability to cant which can be locked with its new throw lever.”

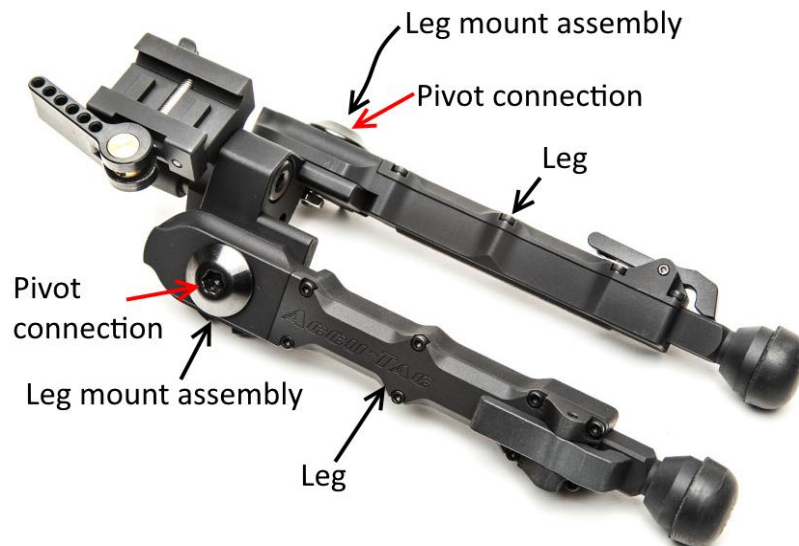
35. The connector of the BR-4 G2 Bipod includes a pivot support between the first and second portions that permits relative movement there between at least about a generally longitudinal axis, as illustrated below:



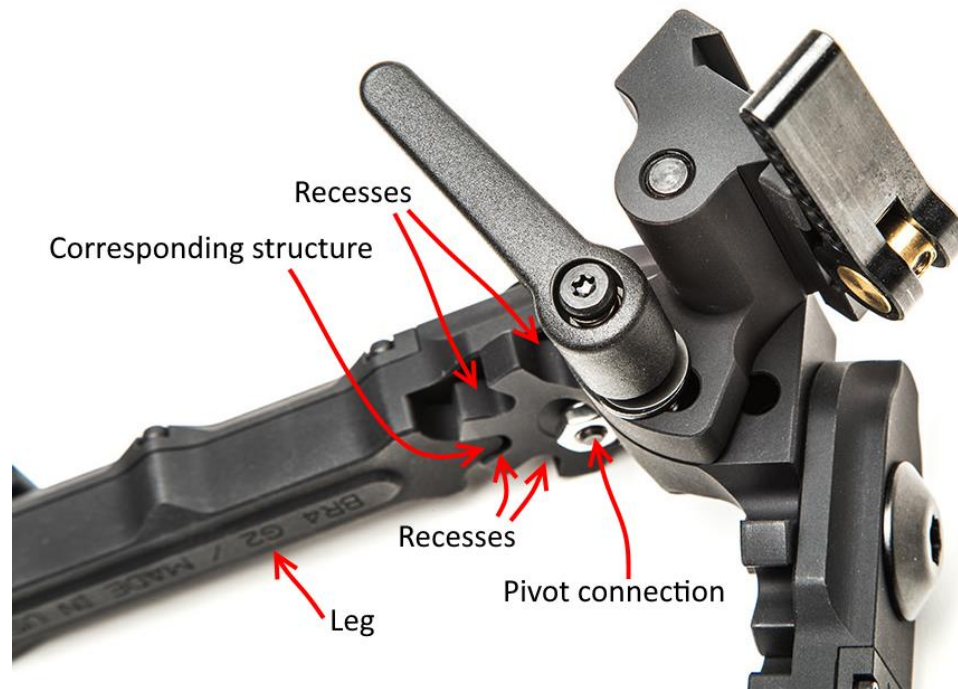


In the BR-4 G2 Bipod model, the pivot support includes at least a fastener member that connects the first and second portions and acts as a pivot axis.

36. The BR-4 G2 Bipod has legs independently mounted to and movable on the opposing sides of the second portion by a leg mount assembly including a pivot connection that is biased in place.



37. Each of the opposing sides of the second portion has a plurality of recesses arranged there about. Each leg mount assembly further includes a corresponding structure (in this case, a tooth-like member shaped to correspond with the recesses) that can mate with and be releasably secured within one of the plurality of recesses so that, when the structure is moved relative to a biased condition, the leg can be moved around the pivot connection and the corresponding structure can be positioned in one of the plurality of recesses so as to permit each leg to be independently stowable in a rearward manner adjacent the weapon, stowable in a forward manner adjacent the weapon, and adjustably locked in any one of a plurality of positions there between. As shown below:



The leg is pulled against a spring in a direction away from the second portion to disengage the corresponding structure from the recesses, allowing the leg to pivot to a different position.

38. Marketing materials published by ACCU-TAC for the BR-4 G2 Bipod state: “Our leg design allows the shooter to quickly adjust to 5 different positions with the advantage of being able to position each leg different positions with the advantage of being able to position each leg differently” and “To engage or adjust

1 leg position, simply pull the leg downward to move each leg independently. Leg
2 positions can be deployed in a 45 or 90 degree position either forwards or backwards,
3 locking securely into 5 positions through a 180 degree arch [sic].”

4 39. Based on the foregoing, ACCU-TAC’s past and/or continued
5 manufacture, use, sale, offer for sale, and/or importation of the BR-4 G2 Bipod as
6 it was known or should have been known by ACCU-TAC that making, using,
7 selling, offering for sale, and/or importing constituted infringement, or highly likely
8 constituted infringement, of at least claim 1 of the ‘693 patent.

9 40. Based on the foregoing, the acts of infringement complained of herein,
10 i.e., infringement of at least claim 1 of the ‘693 patent, is being carried out willfully
11 and with full knowledge by ACCU-TAC of the ‘693 patent.

12 41. Upon information and belief, Salazar directed the activities of ACCU-
13 TAC, including to ignore warning from the Plaintiffs and to continue willful
14 infringement of the ‘693 patent.

15 42. As a result of ACCU-TAC's direct infringement, induced by Salazar,
16 Plaintiffs have suffered and continue to suffer substantial injury, including
17 irreparable injury, that will result in further damages to Plaintiffs.

18 43. Upon information and belief, at Salazar’s sole direction, ACCU-TAC
19 has continued and continues to infringe the ‘684 and ‘693 patents willfully.

20 44. Salazar’s acts constitute infringement under 35 U.S.C. § 271(b). His
21 actions induced infringing acts that he knew or should have known would induce
22 actual infringements.

23 45. Upon information and belief, the irreparable injury resulting from
24 ACCU-TAC and Salazar’s acts of infringement will continue unless enjoined by the
25 Court.

26 ///

27 ///

28 ///

SECOND CAUSE OF ACTION

Patent Infringement of U.S. Patent No. 8,402,684

(Against All Defendants)

46. The allegations of the preceding paragraphs are incorporated by reference as though fully set forth herein.

47. This is a cause of action for direct patent infringement under 35 U.S.C. § 271(a) and indirect infringement under 35 U.S.C. § 271(b).

48. Upon information and belief, ACCU-TAC, at the direction of Salazar, infringed, and is continuing to infringe, at least claim 1 of the '684 patent by its manufacture, use, offer for sale, sale, and/or importation into the United States of bipods, including, but not limited to, those referred to as the ACCU-TAC FC-G2 F-Class Bipod ("FC-G2 Bipod").

49. A comparison of photographic exemplars of the FC-G2 Bipod with the elements of claim 1 above demonstrates that the FC-G2 Bipod infringes at least claim 1 of the '684 patent. As can be seen in the images of the FC-G2 Bipod below, the FC-G2 Bipod is a bipod weapon support. It includes a connector that has a first portion mountable to the weapon and a second portion on which each of two legs are attached on opposing sides thereof, as shown below:

///

///

///

///

///

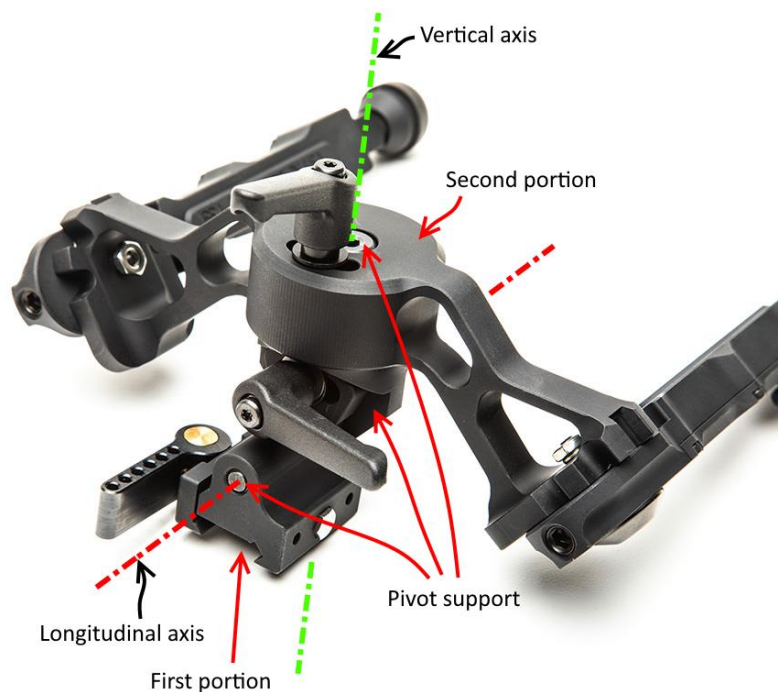
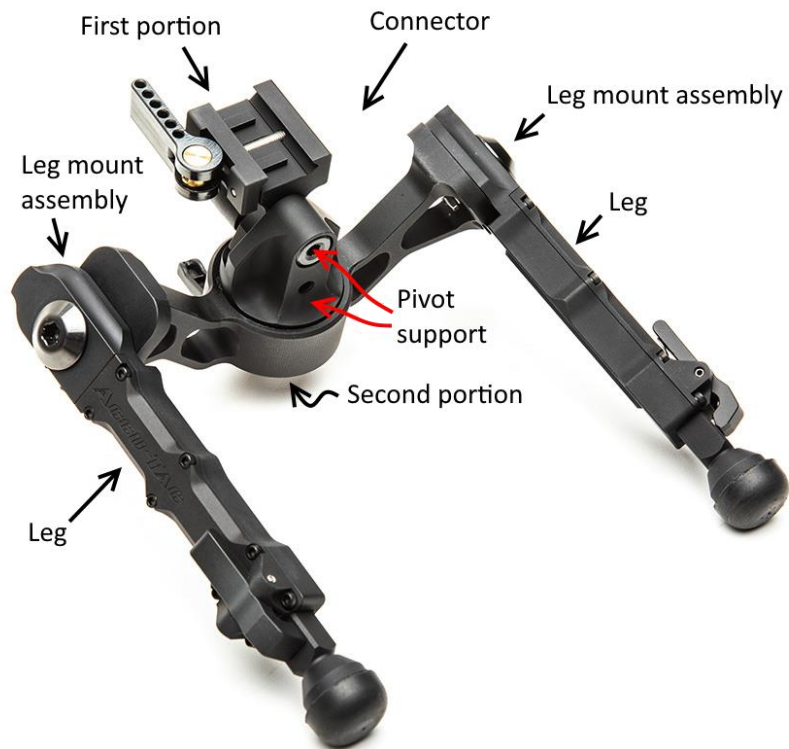
///

///

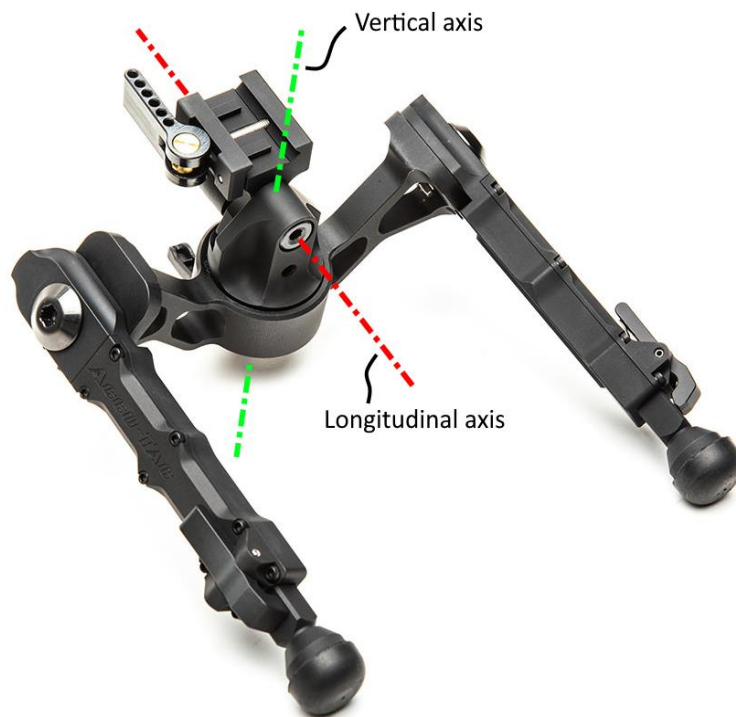
///

///

///



50. The connector of the FC-G2 bipod includes a pivot support between the first and second portions that permits relative movement between the first and second portions and along vertical and longitudinal axes, as shown below:



In this case, the pivot support includes two fastener members that act as pivot axes and an intermediate member between the first portion and second portion which, together, permit relative movement between the first and second portions in both a longitudinal axis and a vertical axis.

51. Promotional materials published by ACCU-TAC for the FC-G2 Bipod state: “Our F-Class has the ability to pan, and cant.” Panning is side-to-side movement along the vertical axis and canting is tilting movement along the longitudinal axis.

52. In the FC-G2 Bipod, each leg is independently mounted to and movable on the opposing sides of the second portion by a leg mount assembly, as shown below.

///

///

///

///



53. Each leg mount assembly includes a pivot connection that is biased in place. Each of the opposing sides has a plurality of recesses arranged there about. Each leg mount assembly further includes a corresponding structure (in this case, a tooth-like member shaped to correspond with the recesses) that can mate with and be releasably secured within one of the plurality of recesses so that, when the structure is moved relative to a biased condition, the leg can be moved around the pivot connection and the corresponding structure can be positioned in one of the plurality of recesses. This permits each leg to be independently stowable in a rearward manner adjacent the weapon, stowable in a forward manner adjacent the weapon, and adjustably locked in any one of a plurality of positions there between.

1 54. Promotional materials for the FC-G2 Bipod state: “The leg design
2 allows the shooter to quickly adjust to 5 different positions with the advantage
3 of being able to position each leg differently” and “To engage or adjust leg
4 position, simply pull the leg downward to move each leg independently. Leg
5 positions can be deployed in a 45 or 90 degree position either forwards or
6 backwards, locking securely into 5 positions through a 180 degree arch [sic].”

7 55. Based on the foregoing, ACCU-TAC's past and/or continued
8 manufacture, use, sale, offer for sale, and/or importation of the FC-G2 Bipod as it
9 was known or should have been known by ACCU-TAC that making, using, selling,
10 offering for sale, and/or importing constituted infringement, or highly likely
11 constituted infringement, of at least claim 1 of the ‘684 patent.

12 56. Based on the foregoing, the acts of infringement complained of herein,
13 i.e., infringement of at least claim 1 of the ‘684 patent, is being carried out willfully
14 and with full knowledge by ACCU-TAC of the ‘684 patent.

15 57. Upon information and belief, Salazar directs the activities of ACCU-
16 TAC, including to ignore warning from the Plaintiffs and to continue willful
17 infringement of the ‘684 patent.

18 58. As a result of ACCU-TAC's direct infringement, induced by Salazar,
19 Plaintiffs have suffered and continue to suffer substantial injury, including
20 irreparable injury, that will result in further damages to Plaintiffs.

21 59. Upon information and belief, at Salazar’s sole direction, ACCU-TAC
22 has continued and continues to infringe the ‘684 and ‘693 patents willfully.

23 60. Salazar’s acts constitute infringement under 35 U.S.C. § 271(b). His
24 actions induced infringing acts that he knew or should have known would induce
25 actual infringements.

26 61. Upon information and belief, the irreparable injury resulting from
27 ACCU-TAC and Salazar's acts of infringement will continue unless enjoined by the
28 Court.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

1. That the Court enter judgment that ACCU-TAC and Salazar jointly and severally infringe at least claim 1 of United States Patent No. 8,904,693 and at least claim 1 of United States Patent No. 8,402,684;
2. That the Court preliminarily and permanently enjoin ACCU-TAC and Salazar, their agents, sales representatives, servants and employees, associates, attorneys, parent companies, successors, and assigns, and any and all persons or entities acting at, through, under, or in active concert or participation with any or all of them, from infringing United States Letters Patent Nos. 8,904,693 and 8,402,684;
3. That the Court enter judgment requiring ACCU-TAC and Salazar to account for all infringing acts and to pay over to Plaintiffs any and all damages sustained by Plaintiffs due to their acts of infringement, and that the Court treble such damages pursuant to 35 U.S.C. § 284 for the willful acts of infringement complained of herein;
4. That the Court award Plaintiff all costs and prejudgment interest on all damages;
5. That the Court determine that this case is exceptional under 35 U.S.C. § 285 and award to Plaintiffs their reasonable attorney fees;
6. That the Court order ACCU-TAC and Salazar to file with the Court within 30 days after entry of final judgment a written statement under oath setting forth in detail the manner in which they have complied with the judgment; and

1 7. That the Court award Plaintiffs such other and further relief as the
2 Court deems just and proper.

3
4 **DEMAND FOR JURY TRIAL**

5 Plaintiffs pursuant to Rule 38, F.R.C.P., hereby demand a trial by jury of all
6 issues so triable.

7
8 DATED: June 10, 2020

KAHANA & FELD LLP

9
10 By:  _____
11 Samuel Yu

12 and

13 Glenn D. Bellamy (pro hac vice)
14 Wood Herron & Evans LLP

15 Attorneys for Plaintiffs B-5, Inc. and
16 B & T Industries, LLC

17

18

19

20

21

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June 2020, I will electronically file the foregoing document with the Clerk of the Court using the CM/ECF system. I hereby certify I will electronically serve the following CM/ECF users below:

Brenton R. Babcock, Esq.

Womble Bond Dickinson US LLP

400 Spectrum Center Drive, Suite 1700

Irvine, CA 92618

brent.babcock@wbd-us.com

(Attorney for Defendants Accu-Tac, LLC & Luis Felipe Salazar)

Dated this 10th day of June, 2020


Christine Dockery