

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
CENTRAL ISLIP DIVISION**

AUTRONIC PLASTICS, INC. D/B/A CLEAR-
VU LIGHTING

Plaintiff,

v.

APOGEE LIGHTING, INC., APOGEE
TRANSLITE, INC., APOGEE LIGHTING
HOLDINGS, LLC, LYNNE B. ENTERPRISES
INC., KLH CAPITAL MANAGEMENT, LLC
and KLH CAPITAL PARTNERS, L.P.

Defendants.

Civil Action No. 2:19-cv-06268-MKB-ST

Jury Trial Demanded

SECOND AMENDED COMPLAINT

Plaintiff Autronic Plastics, Inc. d/b/a Clear-Vu Lighting for its complaint against Defendants Apogee Lighting, Inc., Apogee Translite, Inc., Apogee Lighting Holdings, LLC, Lynne B. Enterprises Inc., KLH Capital Management, LLC and KLH Capital Partners, L.P. hereby alleges as follows:

PARTIES

1. Plaintiff Autronic Plastics, Inc. d/b/a Clear-Vu Lighting (“Clear-Vu” or “Plaintiff”) is a New York Corporation with a principal place of business located at 1150 Motor Parkway, Central Islip, New York 11722.

2. On information and belief, Defendant Apogee Lighting, Inc. is a New York Corporation with a principal place of business at 593 Acorn Street, Deer Park, New York 11729.

3. On information and belief, Defendant Apogee Translite, Inc. is a New York Corporation with a principal place of business at 593 Acorn Street, Deer Park, New York 11729.

4. On information and belief, Defendant Apogee Lighting Holdings, LLC is a Delaware Corporation with a principal place of business at 593 Acorn Street, Deer Park, New

York.

5. On information and belief, Defendant Lynne B. Enterprises Inc. is a New York Corporation with a principal place of business at 593 Acorn Street, Deer Park, New York 11729.

6. On information and belief, Defendants KLH Capital Management LLC and KLH Capital Partners, L.P. (collectively, “KLH Capital”) have a principal place of business at 601 Bayshore Boulevard, Suite 650, Tampa, Florida 33606.

7. Apogee Lighting, Inc., Apogee Translite, Inc., Apogee Lighting Holdings, LLC, and Lynne B. Enterprises Inc., collectively are referred to herein as “Apogee.”

8. Defendants collectively are referred to herein as “Defendants.”

NATURE OF THE ACTION

9. This is a civil action for infringement of United States Patent No. 9,625,139, United States Patent No. 9,909,748, and United States Patent No. 10,190,760 (collectively, the “patents-in-suit”) under the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*

JURISDICTION AND VENUE

10. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.*

11. This Court has personal jurisdiction over Defendants Apogee Lighting, Inc., Apogee Translite, Inc., Apogee Lighting Holdings, LLC, Lynne B. Enterprises Inc. because the principal place of business of each is located within this judicial district. This Court also has personal jurisdiction over Defendants because Defendants have committed acts of infringement in this judicial district in violation of 35 U.S.C. § 271 and have placed infringing products into the stream of commerce with the knowledge and/or understanding that such products are used and/or sold in this judicial district. On information and belief, KLH Capital directs and controls the

business operations of other defendants, including at least Apogee Lighting Holdings LLC, and directs and controls the sale, offering for sale, etc., of the accused products. These acts have caused and continue to cause injury to Clear-Vu within this judicial district. Defendants derive substantial revenue from the sale of infringing products distributed within the judicial district, and/or expect or should reasonably expect their actions to have consequences within the judicial district.

12. Further, Defendant Apogee Lighting, Inc., Defendant Apogee Translite, Inc., and Defendant Lynne B. Enterprises Inc. are also subject to the Court's personal jurisdiction because each is incorporated in the State of New York.

13. Venue is proper in this judicial district as to each Defendant under 28 U.S.C. § 1400(b).

THE PATENTS-IN-SUIT

14. On April 18, 2017, United States Patent No. 9,625,139, titled "Modular LED Lighting Assembly," ("the '139 patent") was duly and lawfully issued by the United States Patent and Trademark Office.

15. The '139 patent is attached hereto as Exhibit 1.

16. Plaintiff is the owner by assignment of the '139 patent with sole rights to enforce the '139 patent, sue infringers, and collect damages for such infringements.

17. On March 6, 2018, United States Patent No. 9,909,748, titled "LED Light Fixture for use in Public Transportation Facilities," ("the '748 patent") was duly and lawfully issued by the United States Patent and Trademark Office.

18. The '748 patent is attached hereto as Exhibit 2.

19. Plaintiff is the owner by assignment of the '748 patent with sole rights to enforce the '748 patent, sue infringers, and collect damages for such infringements.

20. On Jan. 29, 2019, United States Patent No. 10,190,760, titled “LED Light Fixture for use in Public Transportation Facilities,” (“the ’760 patent”) was duly and lawfully issued by the United States Patent and Trademark Office.

21. The ’760 patent is attached hereto as Exhibit 3.

22. Plaintiff is the owner by assignment of the ’760 patent with sole rights to enforce the ’760 patent, sue infringers, and collect damages for such infringements.

FACTUAL BACKGROUND

Clear-Vu’s Pioneering Inventions

23. Clear-Vu is a pioneer in the LED lighting industry. Clear-Vu is a U.S. based designer and manufacturer of advanced LED lighting systems with over thirty years of experience as an original equipment manufacturer (“OEM”) to major lighting companies. Clear-Vu has pioneered niche markets and delivered many firsts, including the first time LEDs have lit up an entire construction site, the first time LEDs have lit up a sidewalk under bridge and shed scaffolding, and the first time an LED light source has been energized by a third rail input.

Apogee and KLH Capital’s Willful Infringement

24. For LED lighting products in the mass transportation field, Clear-Vu’s main competitor (and indeed, only competitor in the New York City market) is Apogee. Both Clear-Vu and Apogee’s products are installed in public transportation systems operated by the New York City Metropolitan Transit Authority (“MTA”). Defendants’ products are ultimately installed by and sold to the MTA through electrical contractors and electrical distributors such as, on information and belief, Smalls Electrical Construction, Inc. (“Smalls”) and Wesco Distribution, Inc. (“Wesco”).

25. For years, Apogee and Clear-Vu have competed head-to-head in connection with attempting to win bids for their respective products to be installed in New York City subways. On

[REDACTED]

information and belief, Apogee knew of each of the patents-in-suit prior to the filing of this Complaint, and as early as upon or shortly after the respective issuance of each of the patents-in-suit. Nevertheless, Apogee has not ceased selling infringing products, nor did Apogee contact Clear-Vu regarding a request for a license to the patents-in-suit, or to engage in any good-faith discussions with Clear-Vu.

26. KLH Capital is a

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

27. KLH Capital's employees

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

28. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

29. KLH Capital has also already substantially participated in this lawsuit. On multiple occasions, KLH Capital itself has appeared, represented by counsel, to take positions in this case, including to oppose certain requested discovery, Dkt. 67, and to oppose the proposed amendment of the complaint to add KLH as a party, Dkt. 66.

30. KLH Capital, through directing and controlling Apogee, derives and continues to derive substantial revenue from the sale of infringing products distributed within this judicial district before and after its knowledge of the patents-in-suit.

31. As one example of Defendants' knowledge of the patents-in-suit, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

32. In particular, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *See* Dkts. 106, 110.

33. As another example, Clear-Vu sent correspondence on September 19, 2019 to Smalls, informing Smalls of its infringement by its sale or use of Apogee's products. Clear-Vu in that correspondence also included claim charts detailing how the Apogee products infringe. On information and belief, Clear-Vu's correspondence was forwarded by Smalls to Defendants and, within days after the September 19 letter was sent to Smalls, Defendants removed information regarding certain infringing products, including its Series 99 Hybrid EM LED, from the Apogee website. *Compare* Exhibit 13 (a webpage from Apogee's website as reflected on archive.org in July 2019) *with* Exhibit 14 (a webpage from Apogee's website as of the filing of the Original Complaint). As another example, the VR60 specification sheet, attached hereto as Exhibit 15, with the "Option" of "Hybrid Emergency Backup" and technical drawing shown therein

reproduced in the claim charts previously sent to Smalls (and referenced in the claim charts accompanying this Complaint), is no longer available on the Apogee's website.

34. KLH Capital has knowingly and intentionally induced and encouraged, and continues to induce and encourage Apogee's sales and offers to sell the infringing products. KLH Capital already had notice and knowledge of the patents-in-suit while it induced Apogee to directly infringe the patents-in-suit under 35 U.S.C. § 271(b), with specific intent.

35. KLH Capital has also knowingly induced the infringement because it is a willfully blind defendant who subjectively believes that there is a high probability that the infringement exists, has taken deliberate actions to ignore Apogee's continued infringement of Clear-Vu's patents-in-suit, and continues to direct and control Apogee's continuing infringing conduct at least since KLH Capital learned of the patents-in-suit through communications and notifications from Clear-Vu in January 2019.

36. Therefore, on information and belief, Apogee has knowingly and willfully infringed, and continues to knowingly and willfully infringe, the patents-in-suit. KLH Capital has knowingly and willfully infringed and induced infringement, and continues to knowingly and willfully infringe and induce infringement of the patents-in-suit.

COUNT ONE
(INFRINGEMENT OF UNITED STATES PATENT NO. 9,625,139)

37. Paragraphs 1–36 are incorporated by reference as if fully restated herein.

38. Apogee has directly infringed and continues to infringe one or more claims, including at least claims 10, 13, and 16 of the '139 patent by making, using, selling, and/or offering for sale at least its L3/L6 Platform Lighting System, its GC-36 LED Series, its Series 98J LED, and its Series 98JD LED, and other similar products, in violation of 35 U.S.C. § 271(a). Additional exemplary details of the infringement are set forth in the claim chart attached hereto as Exhibit 16, which is incorporated by reference. Each claim element in Exhibit 16 that is mapped to the

accused products shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required.

39. Apogee has also infringed and continues to infringe the '139 patent through acts of induced and/or contributory infringement in violation of 35 U.S.C. § 271(b) and/or (c). For example, on information and belief, Apogee, with knowledge of the '139 patent, sells and/or offers for sale infringing products and/or components that constitute a material part thereof.

40. KLH has directly infringed and continues to infringe one or more claims, including at least claims 10, 13, and 16 of the '139 patent by directing and controlling Apogee to make, use, sell, and/or offer for sale at least its L3/L6 Platform Lighting System, its GC-36 LED Series, its Series 98J LED, and its Series 98JD LED, and other similar products, and derive substantial benefits from such infringing act, in violation of 35 U.S.C. § 271(a).

41. KLH Capital has also infringed and continues to infringe the '139 patent through acts of induced infringement in violation of 35 U.S.C. § 271(b). For example, on information and belief, KLH Capital, with knowledge of the '139 patent, specifically intends to direct and control Apogee making, using, selling, and/or offering for sale infringing products. KLH Capital has taken deliberate actions to avoid confirming a high probability of infringing the '139 patent known to it through communications and notifications from Clear-Vu.

42. Defendants' actions complained of herein are causing irreparable harm and monetary damages to Clear-Vu and will continue to do so unless and until Defendants' are enjoined and restrained by this Court.

43. Further, Defendants' infringement has been willful. As such, the Court should award treble damages under 35 U.S.C. § 284.

44. Clear-Vu is entitled to injunctive relief and/or monetary damages based on the injuries arising from Defendants' infringement.

45. Clear-Vu is in compliance with 35 U.S.C. § 287.

**COUNT TWO
(INFRINGEMENT OF UNITED STATES PATENT NO. 9,909,748)**

46. Paragraphs 1–45 are incorporated by reference as if fully restated herein.

47. Apogee has directly infringed and continues to infringe one or more claims, including at least claims 7 and 8 of the '748 patent by making, using, selling, and/or offering for sale at least its Series 99 Hybrid EM LED, GC-36 LED Series with Hybrid Emergency Backup, VR60 with Hybrid Emergency Backup, and VR4 with Hybrid Emergency Backup in violation of 35 U.S.C. § 271(a). Additional exemplary details showing infringement are set forth in the claim chart attached hereto as Exhibit 17, which is incorporated by reference herein. Each claim element in Exhibit 17 that is mapped to the accused products, shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required.

48. Apogee has also infringed and continues to infringe the '748 patent through acts of induced and/or contributory infringement in violation of 35 U.S.C. § 271(b) and/or (c). For example, on information and belief, Apogee, with knowledge of the '748 patent, sells and/or offers for sale infringing products and/or components that constitute a material part thereof.

49. KLH has directly infringed and continues to infringe one or more claims, including at least claims 7 and 8 of the '748 patent by directing and controlling Apogee to make, use, sell, and/or offer for sale at least its Series 99 Hybrid EM LED, GC-36 LED Series with Hybrid Emergency Backup, VR60 with Hybrid Emergency Backup, and VR4 with Hybrid Emergency Backup in violation of 35 U.S.C. § 271(a).

50. KLH Capital has also infringed and continues to infringe the '748 patent through acts of induced infringement in violation of 35 U.S.C. § 271(b). For example, on information and belief, KLH Capital, with knowledge of the '748 patent, specifically intends to direct and control

Apogee making, using, selling, and/or offering for sale infringing products. KLH Capital took deliberate actions to avoid confirming a high probability of infringing the '748 patent known to it through communications and notifications from Clear-Vu.

51. Defendants' actions complained of herein are causing irreparable harm and monetary damages to Clear-Vu and will continue to do so unless and until Defendants are enjoined and restrained by this Court.

52. Further, Defendants' infringement has been willful. As such, the Court should award treble damages under 35 U.S.C. § 284.

53. Clear-Vu is entitled to injunctive relief and/or monetary damages based on the injuries arising from Defendants' infringement.

54. Clear-Vu is in compliance with 35 U.S.C. § 287.

**COUNT THREE
(INFRINGEMENT OF UNITED STATES PATENT NO. 10,190,760)**

55. Paragraphs 1–54 are incorporated by reference as if fully restated herein.

56. Apogee has directly infringed and continues to infringe one or more claims, including at least claim 1 of the '760 patent by making, using, selling, and/or offering for sale at least its Series 99 Hybrid EM LED, GC-36 LED Series with Hybrid Emergency Backup, VR60 with Hybrid Emergency Backup, and VR4 with Hybrid Emergency Backup in violation of 35 U.S.C. § 271(a). Additional exemplary details showing infringement are set forth in the claim chart attached hereto as Exhibit 18, which is incorporated by reference herein. Each claim element in Exhibit 18 that is mapped to the accused products, shall be considered an allegation within the meaning of the Federal Rules of Civil Procedure and therefore a response to each allegation is required.

57. Apogee has also infringed and continues to infringe the '760 patent through acts of induced and/or contributory infringement in violation of 35 U.S.C. § 271(b) and/or (c). For

example, on information and belief, Apogee, with knowledge of the '760 patent, sells and/or offers for sale infringing products and/or components that constitute a material part thereof.

58. KLH has directly infringed and continues to infringe one or more claims, including at least claim 1 of the '760 patent by making, using, selling, and/or offering for sale at least its Series 99 Hybrid EM LED, GC-36 LED Series with Hybrid Emergency Backup, VR60 with Hybrid Emergency Backup, and VR4 with Hybrid Emergency Backup in violation of 35 U.S.C. § 271(a).

59. KLH Capital has also infringed and continues to infringe the '760 patent through acts of induced infringement in violation of 35 U.S.C. § 271(b). For example, on information and belief, KLH Capital, with knowledge of the '760 patent, specifically intends to direct and control Apogee making, using, selling, and/or offering for sale infringing products. KLH Capital took deliberate actions to avoid confirming a high probability of infringing the '760 patent known to it through communications and notifications from Clear-Vu.

60. Defendants' actions complained of herein are causing irreparable harm and monetary damages to Clear-Vu and will continue to do so unless and until Defendants' are enjoined and restrained by this Court.

61. Further, Defendants' infringement has been willful. As such, the Court should award treble damages under 35 U.S.C. § 284.

62. Clear-Vu is entitled to injunctive relief and/or monetary damages based on the injuries arising from Defendants' infringement.

63. Clear-Vu is in compliance with 35 U.S.C. § 287.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Clear-Vu prays for relief as follows:

- a. Judgment in favor of Clear-Vu on this Complaint on one or more causes of action

asserted herein;

- b. An Order enjoining Defendants, their agents, officers, servants, employees, attorneys, and all persons in active concert or participation with Defendants who receive notice of the order from further infringement of each of the patents-in-suit (or, in the alternative, awarding Clear-Vu a running royalty from the time of judgment going forward);
- c. An award of damages to Clear-Vu under 35 U.S.C. § 284 for past infringement and any continuing or future infringement up until the date Defendants are finally and permanently enjoined from further infringement, including both compensatory damages and treble damages for Defendants' willful infringement;
- d. A determination that this case is exceptional under 35 U.S.C. § 285 and an award to Clear-Vu of reasonable attorney fees in prosecuting this action; and
- e. An award of pre-judgment and post-judgment interest, and costs and expenses to the fullest extent permitted by law;
- f. An award of such other and further relief at law or in equity as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Under Federal Rule of Civil Procedure 38(b), Clear-Vu demands a trial by jury on all issues so triable.

DATED: August 3, 2021

Respectfully submitted,

/s/ Robert L. Maier

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2021, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

/s/ Robert L. Maier

Robert L. Maier

BAKER BOTTS L.L.P.

*Attorney for Plaintiff Autronic Plastics, Inc.
d/b/a Clear-Vu Lighting*

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2021, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

/s/ Robert L. Maier

Robert L. Maier

BAKER BOTTS L.L.P.

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