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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

SMART PARTS, INC., a Pennsylvania
corporation

Plaintiff,

v.

AKALMP, INC., an Indiana corporation, and
AARON K. ALEXANDER, an Individual

Defendant.

CV _____

**COMPLAINT FOR PATENT
INFRINGEMENT
Pursuant to 35 U.S.C. §§ 271 and 281**

COMPLAINT FOR WILLFUL PATENT INFRINGEMENT

Plaintiff, Smart Parts, Inc., by and through its undersigned attorneys, files this Complaint in Civil Action against Defendants AKALMP, Inc., and Aaron K. Alexander for willful infringement of its U.S. Patent Nos. 6,035,843 (the '843 patent); 5,083,707 (the '707 patent); 5,967,133 (the '133 patent); and 6,474,326 B1 (the '326 patent).

I. INTRODUCTION

1. Smart Parts owns several United States Patents relating to the electronic control of paintball guns.

2. Mr. Alexander has known of Smart Parts' patents since as early as June 2000 when he received a letter inviting him to take a license under those patents.

3. Mr. Alexander refused Smart Parts licensing offer and has taken an active role in trying to assist others in avoiding Smart Parts' licensing efforts.

4. Among other things, Mr. Alexander testified on behalf of a previous Defendant before this Court, Indian Creek Design, Inc., with respect to its infringement and the validity of Smart Parts' '326 patent in that case.

5. Mr. Alexander provided testimony that establishes at least one of his company's products likely infringes Smart Parts' patent claims.

6. Notwithstanding Mr. Alexander's awareness of his company's infringement, Mr. Alexander testified that AKALMP would continue to infringe even if Smart Parts prevailed in the Indian Creek case.

7. Indian Creek has since admitted both infringement and validity of the '326 patent.

8. Mr. Alexander's company continues to make, sell, and/or offer for sale, infringing products with his knowledge, consent, and supervision.

II. THE PARTIES

9. Smart Parts is a Pennsylvania corporation headquartered at 100 Station Street, Loyahanna, Pennsylvania.

10. AKALMP is believed to be an Indiana corporation doing business as AKA Low Pressure Experts and a citizen of the State of Indiana, with a principal place of business at 16 South Keystone Ave, Indianapolis, Indiana, and a registered agent at 2427 N. Franklin Rd., Indianapolis, Indiana.

11. AKALMP's President and agent for service of process, Mr. Alexander, is believed to be a resident of the State of Indiana.

III. JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this patent infringement action under 28 U.S.C. §§ 1331 and 1338(a).

13. This Court has personal jurisdiction and venue with respect to AKALAMP and Mr. Alexander under 28 U.S.C. §§ 1391(b), 1391(c), and/or 1400(b).

14. Among other things, AKALMP, at Mr. Alexander's direction, and/or with his knowledge and consent, has sold, offered for sale, advertised, and/or solicited orders for its infringing products in this District. In addition, Mr. Alexander has personally traveled to this District in an attempt to promote his objective of invalidating claims of one or more of the patents at issue.

IV. FACTUAL BACKGROUND

15. Technological advances have transformed the sport of paintball from a backwoods "survival" game into one of the most active and popular non-traditional sports in existence.

16. Smart Parts' introduction of the first commercially-available electronic paintball gun played a key role in this development.

17. Realizing the importance of its invention, Smart Parts (and its joint-developer PneuVentures, Inc.) filed and prosecuted multiple patents to issuance related to electronic paintball gun control.

18. Having invested a significant amount of money to purchase PneuVenture's share of the patent rights, Smart Parts is now the sole owner of the patents at issue.

19. Smart Parts has been providing notice of its proprietary rights to this technology since its introduction in 1996 and has been marking its products with the actual patent numbers since they began issuing in 1999.

20. Smart Parts also provided actual notice to AKALMP with respect to the issuance of the '707, '133, '843 patents through a licensing invitation mailed on June 13, 2000.

21. Smart Parts' intuition into the importance of this innovation has been confirmed repeatedly by the efforts of other companies to introduce electronically-operated paintball guns falling within the scope of Smart Parts' patent rights all since Smart Parts' introduction thereof.

22. Since Smart Parts' public introduction of the commercial embodiment of its invention in January 1996, many paintball gun manufacturers then in existence, as well as numerous start-ups, have introduced electronic paintball markers suspected of infringing Smart Parts' patent claims.

23. AKALMP, in particular, designed and began offering and selling its infringing electronic paintball markers after becoming aware of Smart Parts' invention, and after having access to Smart Parts' "Shocker" electro-pneumatic paintball gun.

24. Despite their notable absence before the introduction of the "Shocker" in 1996, electro-pneumatic paintball markers have become the choice of tournament players and are now used almost exclusively in tournament play.

25. The rapid industry shift to Smart Parts' patented innovation is a testament to the importance of this technology to the industry and to the extraordinary value of Smart Part's proprietary interests that are being damaged by the infringing actions of AKALMP, its President Mr. Alexander, and others.

26. The quickness of the industry shift toward products suspected of infringing Smart Parts' patents also presents enormous logistical difficulties in the pursuit of suspected infringers and the adequate protection of Smart Parts' proprietary rights.

27. Smart Parts' patents are extremely valuable business assets that mandate prompt enforcement to protect their value.

28. Mr. Alexander and his company, AKALMP, have infringed and are continuing to infringe multiple claims of Smart Parts' patents, among other ways, through the manufacture, sale, and offer for sale of its "Viking" and "Excalibur" brand paintball markers.

29. Mr. Alexander has expressed his intentions to continue to infringe these patents unless and until he is enjoined by this Court.

30. AKALMP, with the knowledge and consent of, and/or at the direction of Mr. Alexander, has made and sold numerous electronic paintball markers since the issuance of Smart Parts' patents, the precise number of which cannot be determined without discovery.

31. Mr. Alexander's infringement through his company has been done with knowing and willful disregard for Smart Parts' patent rights.

32. As a direct and proximate consequence of the acts and practices alleged, Smart Parts has been, is being, and, unless and until such acts and practices are enjoined by the Court, will continue to be injured in its business and property rights, and has suffered, is suffering, and

will continue to suffer injury and damages, for which it is entitled to relief under 35 U.S.C. §§ 283 and 284.

33. Smart Parts, has been, and continues to be, significantly and irreparably harmed by the infringing acts of AKALMP and Mr. Alexander in an amount that is difficult to ascertain.

34. AKALMP's and Mr. Alexander' past and continued infringing actions are causing direct monetary damage to Plaintiff by taking sales or licensing revenue directly away from Plaintiff for each infringing gun AKALMP sells.

35. AKALMP's and Mr. Alexander' past and continued infringing actions are further causing irreparable and immeasurable damage to Plaintiff by encouraging others to infringe and by preventing Smart Parts from using its resources to pursue other suspected infringers.

36. Mr. Alexander's infringement through AKALMP is willful and has been and continues to be done in deliberate disregard of Smart Parts' rights, making this an exceptional case for which an award of plaintiff's attorney fees is appropriate under 35 U.S.C. § 285.

37. An award of treble damages under 35 U.S.C. § 284 is also appropriate.

38. By reason of the acts and practices alleged herein, AKALMP and Mr. Alexander have caused, are causing, and unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to Plaintiff for which Smart Parts has no adequate remedy at law, and for which Plaintiff is entitled to immediate preliminary and permanent injunctive relief under 35 U.S.C. § 283.

COUNT I

(PATENT INFRINGEMENT -- U.S. PATENT NO. 5,881,707)

39. Smart Parts hereby incorporates by reference the averments set forth in Paragraphs 1 through 38 of this Complaint as if they were set forth fully herein.

40. AKALMP's manufacture, use, offer for sale, and sale of one or more of its electronic paintball guns is a direct infringement, inducement to infringe, and/or contributory infringement, under 35 U.S.C. § 271, of Smart Parts' U.S. Patent No. 5,881,707 literally and/or under the doctrine of equivalents.

41. Upon information and belief, Mr. Alexander has actively and knowingly assisted in AKALMP's infringement, which acts constitute an inducement to infringe under 35 U.S.C. § 271(b), of Smart Parts' U.S. Patent No. 5,881,707.

42. Their infringement has been knowing, willful, and deliberate, making this an exceptional case within the meaning of 35 U.S.C. § 285.

43. Smart Parts has been, and continues to be, damaged by this infringement in an amount to be proven at trial, and also in a manner that cannot be fully measured or compensated in economic terms. This infringement will continue to irreparably damage Smart Parts unless enjoined during the pendency of this action and permanently thereafter.

COUNT II

(PATENT INFRINGEMENT -- U.S. PATENT NO. 5,967,133)

44. Smart Parts hereby incorporates by reference the averments set forth in Paragraphs 1 through 38 of this Complaint as if they were set forth fully herein.

45. AKALMP's manufacture, use, offer for sale, and sale of one or more of its electronic paintball guns is a direct infringement, inducement to infringe, and/or contributory infringement, under 35 U.S.C. § 271, of Smart Parts' U.S. Patent No. 5,967,133 literally and/or under the doctrine of equivalents.

46. Upon information and belief, Mr. Alexander has actively and knowingly assisted in AKALMP's infringement, which acts constitute an inducement to infringe under 35 U.S.C. § 271(b), of Smart Parts' U.S. Patent No. 5,967,133.

47. Their infringement has been knowing, willful, and deliberate, making this an exceptional case within the meaning of 35 U.S.C. § 285.

48. Smart Parts has been, and continues to be, damaged by this infringement in an amount to be proven at trial, and also in a manner that cannot be fully measured or compensated in economic terms. This infringement will continue to irreparably damage Smart Parts unless enjoined during the pendency of this action and permanently thereafter.

COUNT III

(PATENT INFRINGEMENT -- U.S. PATENT NO. 6,035,843)

49. Smart Parts hereby incorporates by reference the averments set forth in Paragraphs 1 through 38 of this Complaint as if they were set forth fully herein.

50. AKALMP's manufacture, use, offer for sale, and sale of one or more of its electronic paintball guns is a direct infringement, inducement to infringe, and/or contributory infringement, under 35 U.S.C. § 271, of Smart Parts' U.S. Patent No. 6,035,843 literally and/or under the doctrine of equivalents.

51. Upon information and belief, Mr. Alexander has actively and knowingly assisted in AKALMP's infringement, which acts constitute an inducement to infringe under 35 U.S.C. § 271(b), of Smart Parts' U.S. Patent No. 6,035,843.

52. Their infringement has been knowing, willful, and deliberate, making this an exceptional case within the meaning of 35 U.S.C. § 285.

53. Smart Parts has been, and continues to be, damaged by this infringement in an amount to be proven at trial, and also in a manner that cannot be fully measured or compensated in economic terms. This infringement will continue to irreparably damage Smart Parts unless enjoined during the pendency of this action and permanently thereafter.

COUNT IV

(PATENT INFRINGEMENT -- U.S. PATENT NO. 6,474,326 B1)

54. Smart Parts hereby incorporates by reference the averments set forth in Paragraphs 1 through 38 of this Complaint as if they were set forth fully herein.

55. AKALMP's manufacture, use, offer for sale, and sale of one or more of its electronic paintball guns is a direct infringement, inducement to infringe, and/or contributory infringement, under 35 U.S.C. § 271, of Smart Parts' U.S. Patent No. 6,474,326 B1 literally and/or under the doctrine of equivalents.

56. Upon information and belief, Mr. Alexander has actively and knowingly assisted in AKALMP's infringement, which acts constitute an inducement to infringe under 35 U.S.C. § 271(b), of Smart Parts' U.S. Patent No. 6,474,326 B1.

57. Their infringement has been knowing, willful, and deliberate, making this an exceptional case within the meaning of 35 U.S.C. § 285.

58. Smart Parts has been, and continues to be, damaged by this infringement in an amount to be proven at trial, and also in a manner that cannot be fully measured or compensated in economic terms. This infringement will continue to irreparably damage Smart Parts unless enjoined during the pendency of this action and permanently thereafter.

REQUEST FOR RELIEF:

WHEREFORE, Plaintiff, Smart Parts, requests that judgment be entered in its favor and against Defendants AKALMP and Mr. Alexander declaring, as follows:

A. That AKALMP and Mr. Alexander have directly infringed, induced the infringement of, and/or contributorily infringed upon United States Letters Patent Nos. 5,881,707; 5,967,133; 6,035,843; and 6,474,326 B1, and that such infringement has been willful.

B. That AKALMP, and its officers, agents, servants, and employees, and all persons in active concert or participation with them, including Mr. Alexander, be enjoined and restrained preliminarily during the pendency of this action and permanently thereafter from any and all acts of infringement, whether direct, inducing, or contributory, of United States Patent Nos. 5,881,707; 5,967,133; 6,035,843; and 6,474,326 B1, including:

- i) the manufacture, use, sale, offer for sale, advertising, promotion, and/or distribution of any paintball gun incorporating all the elements of any claim of the '707, '133, '843 or '326 patent.
- ii) the manufacture, use, sale, offer for sale, advertising, promotion, and/or distribution of its Viking and Excalibur paintball guns.

C. That AKALMP's and Mr. Alexander's acts of infringement be found to have been willful and deliberate;

D. That this Court order an accounting to determine the exact amount of gains, profits, and advantages derived by AKALMP and Mr. Alexander in their acts of infringement;

E. That AKALMP and Mr. Alexander be required to pay such damages as Smart Parts has sustained or will sustain in consequence of AKALMP's and Mr. Alexander's patent infringement; and that said damages include an accounting for all gains, profits and advantages

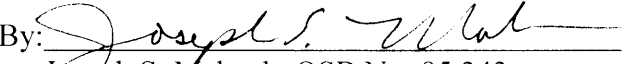
derived by AKALMP and Mr. Alexander that are attributable to such infringement; and that said damages be trebled as provided for by 35 U.S.C. § 284;

F. That this Court adjudge this to be an exceptional case and require AKALMP and Mr. Alexander to pay the costs of this action, including reasonable attorneys' fees and interest, as provided for in 35 U.S.C. § 285; and such other relief as this Court deems just and proper.

JURY TRIAL DEMANDED pursuant to Federal Rule of Civil Procedure 38(a).

Respectfully submitted,

Dated: Nov. 21, 2003

By: 
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