IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND/ODESSA DIVISION

VDPP, LLC, **Plaintiff,** **v.** **RAZER USA, LTD. and RAZER INC.,** **Defendants.**	**Case No. 7:24-cv-00070-DC-DTG** **Jury Trial Demanded**

PLAINTIFF'S FIRST AMENDED COMPLAINT

Plaintiff VDPP, LLC ("VDPP") files this First Amended Complaint and demand for jury trial seeking relief from patent infringement of the claims of U.S. Patent No. 10,021,380 ("the '380 patent") and U.S. Patent No. 9,426,452 ("the '452 patent"), (collectively referred to as the "Patents-in-Suit") by Razer USA, Ltd. and Razer Inc. ("Defendant" or "Razer").

I. THE PARTIES

1. Plaintiff VDPP is a company organized under the laws of Oregon with a principal place of business located in Corvallis, Oregon.

2. On information and belief, Defendant is a corporation organized and existing under the laws of California with a regular and established place of business located at Razerstore Austin, The Domain, 11401 Century Oaks, Austin TX 78758.

3. On information and belief, Defendant sells and offers to sell products and services throughout Texas, including in this judicial district, and introduces products and services that perform infringing methods or processes into the stream of commerce knowing that they would be sold in Texas and this judicial district. Defendant has been served.

II. JURISDICTION AND VENUE

4. This Court has original subject-matter jurisdiction over the entire action pursuant to 28 U.S.C. §§ 1331 and 1338(a) because Plaintiff's claim arises under an Act of Congress relating to patents, namely, 35 U.S.C. § 271.

5. This Court has personal jurisdiction over Defendant because: (i) Defendant is present within or has minimum contacts within the State of Texas and this judicial district; (ii) Defendant has purposefully availed itself of the privileges of conducting business in the State of Texas and in this judicial district; and (iii) Plaintiff's cause of action arises directly from Defendant's business contacts and other activities in the State of Texas and in this judicial district.

6. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and 1400(b). Defendant has committed acts of infringement and has a regular and established place of business in this District. Further, venue is proper because Defendant conducts substantial business in this forum, directly or through intermediaries, including: (i) at least a portion of the infringements alleged herein; and (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct and/or deriving substantial revenue from goods and services provided to individuals in Texas and this District.

III. INFRINGEMENT

A. Infringement of the '380 Patent

7. On July 10, 2018, U.S. Patent No. 10,021,380 ("the '380 patent", included as Exhibit A and part of this complaint) entitled "Faster State Transitioning for Continuous Adjustable 3Deeps Filter Spectacles Using Multi-Layered Variable Tint Materials" was duly and legally issued by the U.S. Patent and Trademark Office. Plaintiff owns the '380 patent by assignment.

8. The '380 patent relates to methods and systems for modifying an image.

9. On information and belief, Defendant maintains, operates, and administers systems, products, and services in the field of motion pictures that infringes one or more of claims of the ’380 patent, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the ’380 Patent into service (i.e., used them); but for Defendant’s actions, the claimed-inventions embodiments involving Defendant’s products and services would never have been put into service. Defendant’s acts complained of herein caused those claimed-invention embodiments as a whole to perform, and Defendant’s procurement of monetary and commercial benefit from it.

10. Support for the allegations of infringement may be found in the preliminary exemplary table attached as Exhibit B (incorporated herein in its entirety). These allegations of infringement are preliminary and are therefore subject to change.

11. If discovery reveals pre-suit knowledge of the Patents-in-Suit, Plaintiff reserves the right to add indirect infringement claims.

12. Defendant has caused Plaintiff damage by infringement of the claims of the ’380 patent.

B. Infringement of the ’452 Patent

13. On August 23, 2016, U.S. Patent No. 9,426,452 (“the ’452 patent”, included as Exhibit A and part of this complaint) entitled “Faster State Transitioning for Continuous Adjustable 3Deeps Filter Spectacles Using Multi-Layered Variable Tint Materials” was duly and legally issued by the U.S. Patent and Trademark Office. Plaintiff owns the ’452 patent by assignment.

14. The ’452 patent relates to an electrically controlled spectacle frame and optoelectronmic lenses housed in the frame.

15. Defendant maintains, operates, and administers systems, products, and services in the field of motion pictures that infringes one or more of claims of the ’452 patent, including one or

more of claims 1-4, literally or under the doctrine of equivalents. Defendant put the inventions claimed by the '452 Patent into service (i.e., used them); but for Defendant's actions, the claimed-inventions embodiments involving Defendant's products and services would never have been put into service. Defendant's acts complained of herein caused those claimed-invention embodiments as a whole to perform, and Defendant's procurement of monetary and commercial benefit from it.

16. Support for the allegations of infringement may be found in the preliminary exemplary table attached as Exhibit D. These allegations of infringement are preliminary and are therefore subject to change.

17. If discovery reveals pre-suit knowledge of the Patents-in-Suit, Plaintiff reserves the right to add indirect infringement claims.

18. Defendant has caused Plaintiff damage by direct and indirect infringement of (including inducing infringement of) the claims of the '452 patent.

IV. CONDITIONS PRECEDENT

19. Plaintiff has never sold a product. Plaintiff is a non-practicing entity, with no products to mark. Plaintiff has pled all statutory requirements to obtain pre-suit damages. Further, all conditions precedent to recovery are met. Under the rule of reason, Plaintiff has taken reasonable steps to ensure marking of licensees producing a patented article. Plaintiff has entered into settlement licenses with several defendants, but none of the settlement licenses to produce a patented article, for or under the Plaintiff's patents. Furthermore, each of the parties in the settlement licenses did not agree that they were infringing any of Plaintiff's patents, including the Patents-din-Suit. Further, to the extent necessary, Plaintiff will limit its claims of infringement to the method claims and thereby remove any requirement for marking.

20. The policy of § 287 serves three related purposes: (1) helping to avoid innocent infringement; (2) encouraging patentees to give public notice that the article is patented; and (3) aiding the public to identify whether an article is patented. These policy considerations are advanced when parties are allowed to freely settle cases without admitting infringement and thus not require marking. All settlement licenses were to end litigation and thus the policies of §287 are not violated. Such a result is further warranted by 35 U.S.C. §286 which allows for the recovery of damages for six years prior to the filing of the complaint.

V. JURY DEMAND

Plaintiff hereby requests a trial by jury on issues so triable by right.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

a. enter judgment that Defendant has infringed the claims of the Patents-in-Suit;

b. award Plaintiff damages in an amount sufficient to compensate it for Defendant's infringement of the Patents-in-Suit in an amount no less than a reasonable royalty or lost profits, together with pre-judgment and post-judgment interest and costs under 35 U.S.C. § 284;

c. award Plaintiff an accounting for acts of infringement not presented at trial and an award by the Court of additional damage for any such acts of infringement;

d. declare this case to be "exceptional" under 35 U.S.C. § 285 and award Plaintiff its attorneys' fees, expenses, and costs incurred in this action;

e. provided discovery reveals that Defendant knew (1) knew of the patent-in-suit prior to the filing date of the lawsuit; (2) after acquiring that knowledge, it infringed the patent;

and (3) in doing so, it knew, or should have known, that its conduct amounted to infringement of the patent, declare Defendants' infringement to be willful and treble the damages, including attorneys' fees, expenses, and costs incurred in this action and an increase in the damage award pursuant to 35 U.S.C. § 284; and

f. award Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

Ramey LLP

/s/ William P. Ramey, III
William P. Ramey, III
Texas Bar No. 24027643
wramey@rameyfirm.com
5020 Montrose Blvd., Suite 800
Houston, Texas 77006
(713) 426-3923 (telephone)

Attorneys for VDPP, LLC

CERTIFICATE OF SERVICE

Pursuant to the Federal Rules of Civil Procedure, I hereby certify that all counsel of record who have appeared in this case are being served on this day of JUNE 13, 2024.

/s/ William P. Ramey, III
William P. Ramey, III