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Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Dial Manufacturing, Inc., an Arizona
corporation,

Plaintiff,

vs.

PPS Packaging Company, a California
corporation,

Defendant.

No.

COMPLAINT

For its Complaint, Plaintiff Dial Manufacturing, Inc. (“Dial”) alleges as follows:

PARTIES

1. Plaintiff Dial is an Arizona corporation with its principal place of business in Phoenix, Arizona. Dial manufactures and sells replacement parts for evaporative coolers.

2. Defendant PPS Packaging Company (“PPS”) is a California corporation with its principal place of business in Fowler, California. PPS manufactures and sells evaporative cooler products in competition with Dial.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. § 1, *et seq.*

4. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331, 1338(a), and 1367(a).

5. This Court may assert personal jurisdiction over the Defendant because Defendant, through its authorized agents, employees and officers, has caused or

1 contributed to the sale, offering for sale, and distribution of the infringing products in and
2 among the several United States, and particularly in this judicial district and, as a result,
3 Dial has been injured in this judicial district.

4 6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(c) and 1400(b)
5 because Defendant has committed acts of infringement in this judicial district.

6 **DIAL’S BUSINESS AND PATENT**

7 7. Dial has designed, manufactured and provided reliable replacement parts for
8 the evaporative cooler industry since 1965, including cooler fittings, electrical accessories,
9 pumps, motors, thermostats, and switches, among other things.

10 8. Dial is the owner by assignment of all right, title, and interest in and to
11 United States Patent No. 5,568,000 (the “Dial Patent”) entitled “Multiple Pole, Shaded
12 Pole Subfractional-Horsepower Induction Motor,” which duly and legally issued in the
13 name of John Hanneken on October 22, 1996. A copy of the Dial Patent is attached
14 hereto as Exhibit A.

15 9. Without Dial’s authorization, Defendant has made, used, offered to sell,
16 sold, and/or imported into the United States evaporative cooler water pumps and pump
17 motors that infringe at least claims 1 and 5, and possibly others, of the Dial Patent (the
18 “Infringing Products”).

19 10. Included among the Infringing Products are PPS pump models P-5G and P-
20 7G, and possibly others.

21 **COUNT I**

22 **(PATENT INFRINGEMENT)**

23 11. Dial re-alleges each and every allegation set forth in paragraphs 1 through 10
24 above, and incorporates them by reference herein.

25 12. Dial has standing to sue for infringement of the Dial Patent because it is the
26 owner of the Dial Patent.

27 13. Defendant has, and continues to, directly and indirectly infringe the Dial
28 Patent by making, using, offering to sell, selling, and/or importing into the United States,

1 the Infringing Products.

2 14. Upon information and belief, Defendant, through its actions, has knowingly
3 contributed to or induced the infringement of the Dial Patent by third parties in violation
4 of 35 U.S.C. § 271. Upon information and belief, Defendants are providing Infringing
5 Products to various third parties for re-sale to the public.

6 15. Upon information and belief, Defendant's infringement has been intentional
7 and willful, making this an exceptional case. Defendant's pump motor is a nearly exact
8 replica of the motor contained in Dial's patented pump, the packaging for which is
9 consistently marked with the Dial Patent number. The particular configuration and
10 features of Dial's pump motor, coupled with that fact that Defendant's pump motor is
11 virtually identical, indicates that Defendant intentionally copied from Dial.

12 16. Defendant's infringement has caused and continues to cause irreparable
13 harm to Dial, which has no adequate remedy at law and will continue to be injured unless
14 and until this Court enters a preliminary and permanent injunction prohibiting further
15 infringement and, specifically, enjoining Defendant and all others who have notice of the
16 injunction from further manufacture, use, offer for sale, sale and importation of products
17 that fall within the scope of claims of the Dial Patent.

18 17. Dial is entitled to recover damages from Defendant in an amount adequate to
19 compensate Dial for the infringement that has occurred and that will continue to occur
20 until an injunction is issued by the Court.

21 **RELIEF REQUESTED**

22 A. Judgment that the Defendant has infringed the Dial Patent in violation of 35 U.S.C.
23 § 271 and that such infringement is willfull;

24 B. A preliminary and permanent injunction prohibiting Defendant, and its
25 respective subsidiaries, affiliates, officers, directors, agents, servants, employees, and all
26 persons in active concert or participation with it, from infringing, contributing to the
27 infringement of, and inducing infringement of the Dial Patent;

28 C. An award of damages adequate to compensate Dial for the patent

1 infringements that have occurred pursuant to 35 U.S.C. § 284, trebled as a result of
2 Defendant's willful patent infringement, or an award of Defendant's profits from its
3 infringements pursuant to 35 U.S.C. § 289, whichever is greater, together with pre- and
4 post-judgment interest and costs;

5 D. An assessment of costs, including reasonable attorney fees, pursuant to 35
6 U.S.C. § 285, with interest; and

7 E. Such other and further relief as this Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Dial demands a jury trial on all triable issues raised in this Complaint.

10
11 RESPECTFULLY SUBMITTED this 23rd day of February, 2010.

12 LEWIS AND ROCA LLP

13
14 By /s/ Shane E. Olafson

Sean D. Garrison

Shane E. Olafson

15 *Attorneys for Dial Manufacturing, Inc.*
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