

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

LEVITATION ARTS, INC., a)	
Texas corporation,)	
)	
Plaintiff,)	Civil No.: 07-CA-990 SS
)	
v.)	SUPPLEMENTAL COMPLAINT
)	FOR PATENT INFRINGEMENT
FASCINATIONS TOYS &)	
GIFTS, INC., a Washington)	
corporation and ASI)	
ASSOCIATES, INC., d.b.a)	
ARBOR SCIENTIFIC, a)	
Michigan corporation,)	
SIMERLAB INTERNATIONAL)	
LTD., a Hong Kong limited)	
liability company,)	
)	
Defendants.)	

Plaintiff, Levitation Arts, Inc. (“Levitation Arts”) for its Complaint against Defendants Fascinations Toys & Gifts, Inc. (“Fascinations”), ASI Associates, Inc. d.b.a. Arbor Scientific (“Arbor”); and Simerlab International Ltd. (“Simerlab”) alleges:

THE PARTIES

1. Levitation Arts is a corporation organized and existing under the laws of the State of Texas and having a place of business at 9130 Fox Briar Lane, Boerne, Texas 78006.

2. Fascinations is a corporation organized and existing under the laws of the State of Washington with its principal place of business at 19224 Des Moines Way South, Suite 100, Seattle, Washington.

3. Arbor is a corporation organized and existing under the laws of the State

of Michigan with a place of business in Ann Arbor, Michigan and a registered agent at 1350 Highland Drive., Suite E, Ann Arbor, Michigan 48108.

4. Simerlab is a limited liability company, on information and belief, organized and existing under the laws of the Hong Kong Special Administrative Region of the People's Republic of China.

JURISDICTION

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the Patent Laws of the United States, 35 U.S.C. § 1, et seq. Personal jurisdiction of the Defendants is proper in this Federal District pursuant to 28 U.S.C. § 1391(c) in that Defendants have conducted business, committed acts of infringement and continue to commit acts of infringement in this District. Venue is proper in this district based on 28 U.S.C. § 1400(b).

BACKGROUND FACTS

6. On December 1, 1992, United States Patent No. 5,168,183 (the '183 patent) was duly and legally issued by the United States Patent and Trademark Office for an invention entitled Levitation System With Permanent Magnets and Coils. Levitation Arts is the owner of the entire right, title and interest in and to the '183 patent by assignment from the inventor to the University of British Columbia and from the latter to Levitation Arts. A copy of these assignments have been recorded in the United States Patent and Trademark Office. A true and correct copy of the '183 patent is attached hereto as Exhibit 1.

7. In February 2007, Levitation Arts was informed that a French company

demonstrated a levitation device at the New York Toy Fair which appeared to infringe claims of the '183 patent. Levitation Arts determined that the French company was offering for sale a levitation device called Planete Bleue Flottante and that the manufacturer and/or designer was a company known as Simerlab. Levitation Arts made contact with the principal of Simerlab, Janick Simeray, and informed Simeray of the existence of the '183 patent. In subsequent correspondence, Simeray stated that he was aware of the patent but that he had many different designs and configurations of his product that he may manufacture. Simeray also informed Levitation Arts that he had filed a patent application for a levitation device in France and the United States. The patent application filed in the United States has been published as US2007/0170798 A1 on July 26, 2007.

8. A Planete Bleue Flottante levitation device was procured in France by Levitation Arts. The unit was disassembled by a consultant who had assisted Levitation Arts in development of Levitation Arts' own product and provided a description of the product to counsel for Levitation Arts. On or about April 24, 2007 counsel for Levitation Arts sent a cease and desist letter to Simerlab International in France and to the manufacturer, HCNT in China. On information and belief, Simerlab International Ltd. is a joint venture comprising Simerlab France, owned and managed by Janick Simeray and HCNT Technology owned and managed by Robert Wang. No response was ever received to these letters.

9. Fascinations is a supplier of scientific toys in the United States and is managed by William Hones. In May, Hones wrote to Levitation Arts that "Fascinations has been contemplating selling Simerlab's Planete Bleue Flottante levitating device in

the U.S.” Mr. Hones stated that he was aware of the Whitehead ‘183 patent and that he had “looked at the Whitehead patent and do not believe it covers the Simerlab levitating device.” Since Simeray had informed Levitation Arts that it had many configurations for levitating devices, and Levitation Arts reviewed the published patent application disclosing various designs and configurations, Levitation Arts could not determine if a Simerlab levitation device infringed the ‘183 patent until a device actually sold in the United States could be analyzed by Levitation Arts. Levitation Arts therefore did not reply to the Hones letter. Additionally, the Hones letter appeared to be an invitation for a charge of infringement such that a declaratory judgment action could be instituted by Fascinations against Levitation Arts.

10. In or about September 2007, Levitation Arts became aware that Arbor had announced an offer to sell levitation devices that appeared to be similar to the Simerlab device previously examined by Levitation Arts. A product called Levitron AG was ordered from Arbor and after examination by Levitation Arts and its consultant, patent counsel for Levitation Arts expressed an opinion that the device being sold by Arbor infringed at least one claim of the ‘183 patent. Moreover, the carton in which the product was packaged indicated that the product was supplied by Fascinations. located in Seattle, Washington and that the product had been made in China by Simerlab International for Fascinations.

11. In February 2008, Simerlab France again exhibited and offered for sale a magnetic levitation device at the New York Toy Fair.

11A. On or about March 28, 2008, Plaintiff filed a motion to correct an error by the United States Patent and Trademark Office in failing to include a phrase in Claim 1

that was entered during prosecution of the application that matured into the '183 patent. The Court denied the motion. On or about April 18, 2008, Levitation Arts filed a petition for correction of the patent. On June 3, 2008, the USPTO, pursuant to 35 U.S.C. § 254, issued a Certificate of Correction (attached hereto and made a part hereof as Exhibit 2) restoring in the '183 patent the phrase "said static magnetic means including fixed magnets arranged at a particular spacing relative to one another in order to generate said magnetic configuration with said magnetic means in the levitated element."

INFRINGEMENT OF THE '183 PATENT

12. Levitation Arts incorporates herein by reference Paragraphs 1 - 11.

13. Arbor, Simerlab and Fascinations have infringed, contributed to infringement, induced infringement, and continue to infringe the '183 patent. The infringing acts include, but are not limited to, the manufacture, use, sale, importation, and offer for sale of the LEVITRON AG Antigravity Globe. Arbor, Simerlab and Fascinations are liable for infringement of the '183 patent under the provisions of 35 U.S.C. § 271.

13A. The infringing acts set forth in Paragraph 13 have continued since June 3, 2008, the date on which the Certificate of Correction was issued.

14. The acts of infringement by Arbor, Simerlab and Fascinations have caused damage to Levitation Arts and Levitation Arts is entitled to recover from Arbor, Simerlab and Fascinations damages sustained by Levitation Arts as a result of the wrongful acts of Arbor, Simerlab and Fascinations in an amount subject to proof at trial.

15. The infringement of the exclusive rights of Levitation Arts has caused

irreparable harm to Levitation Arts for which there is no adequate remedy at law, and unless enjoined by this Court Defendants will continue to infringe the rights of Levitation Arts.

16. At least Fascinations and Simerlab, and possibly Arbor, had knowledge of the charge of infringement of the '183 patent by Levitation Arts to Simerlab and HCNT, yet Simerlab and Fascinations chose to infringe the patent. The infringement of Fascinations and Simerlab of the '183 patent is willful and deliberate and entitles Levitation Arts to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. §285.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Levitation Arts requests entry of judgment in its favor against Fascinations, Simerlab and Arbor as follows:

A. A declaration that Fascinations, Simerlab and Arbor have infringed United States Patent No. 5,168,183.

B. A preliminary and permanent injunction enjoining Fascinations, Simerlab and Arbor, their officers, agents, employees, and those acting in privity with them, from further infringement, contributory infringement and/or inducing infringement of U.S. Patent No. 5,168,183.

C. An award of damages arising out of the infringement of U.S. Patent No. 5,168,183 by Fascinations and Simerlab including enhanced damages pursuant to 35 U.S.C. § 284, together with pre-judgment and post-judgment interest in an amount according to proof.

D. An award of damages arising out of the infringement of U.S. Patent No.

5,168,183 by Arbor together with pre-judgment and post-judgment interest in an amount according to proof.

E. An award of attorneys' fees pursuant to 35 U.S.C. § 285 or as otherwise permitted by law.

F. For such other costs and further relief as this Court may deem just and proper.

Dated this 18th day of September, 2008.

Respectfully submitted,

THE ADAMS LAW FIRM

By s: Paul Adams (admitted *pro hac vice*)

Paul Adams

901 Rio Grande Blvd. NW, Suite H262

Albuquerque, NM 87104

(505) 222-3145

(505) 222-3147 facsimile

adamspatentlaw@gmail.com

GRAVES DOUGHERTY HEARON & MOODY

William Christian

401 Congress Avenue, Suite 2200

Austin, Texas 78701

(512) 480-5600

Attorneys for Levitations Arts, Inc.