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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

HARVEY D. GILLESPIE, an individual,
Plaintiff,

vs.

DYWIDAG SYSTEMS
INTERNATIONAL, USA, INC., a New
York corporation,

Defendant.

**COMPLAINT FOR PATENT
INFRINGEMENT AND JURY DEMAND**

Judge Bruce S. Jenkins
DECK TYPE: Civil
DATE STAMP: 09/08/2004 @ 16:08:09
CASE NUMBER: 2:04CV00833 BSJ

Plaintiff, for his Complaint against the above-identified Defendant, alleges as follows:

1. This is an action for patent infringement arising under 35 U.S.C. § 271.
2. This court has exclusive jurisdiction over the subject matter of this civil action under 28 U.S.C. § 1338(a).
3. Plaintiff is an individual residing in Yuma, Arizona.

4. Upon information and belief, Defendant is a New York corporation having a place of business located at 3900 West 700 South, Salt Lake City, Utah 84104.
5. Venue in this district is proper under 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b).
6. U.S. Patent No. 5,230,589 was issued on July 27, 1993, to inventor Harvey D. Gillespie and is entitled "MINE ROOF BOLT."
7. A copy of U.S. Patent No. 5,230,589 (hereinafter, "the '589 patent") is attached hereto as Exhibit 1.
8. Plaintiff owns the entire right, title and interest in and to the '589 patent.
9. Plaintiff is the owner of record of the '589 patent according to the records of the U.S. Patent and Trademark Office.
10. U.S. Patent No. 5,259,703 was issued on November 9, 1993 to inventor Harvey D. Gillespie and is entitled "MINE ROOF BOLT."
11. A copy of U.S. Patent No. 5,259,703 (hereinafter, "the '703 patent") is attached hereto as Exhibit 2.
12. Plaintiff owns the entire right, title and interest in and to the '703 patent.
13. Plaintiff is the owner of record of the '703 patent according to the records of the U.S. Patent and Trademark Office.
14. The '589 and '703 patents relate to mine roof bolts of the type which utilize multi-strand steel cable.

15. Defendant makes, uses, sells and/or offers to sell mine roof bolts of the type which utilize multi-strand steel cable.

16. A mine roof bolt made and sold by Defendant is shown in the photograph attached hereto as Exhibit 3.

17. Upon information and belief, attached Exhibit 4 is an excerpt from an April 2003 DYWIDAG DSI GROUND SUPPORT brochure that can be downloaded from Defendant's web site and which illustrates Defendant's mine roof bolt.

18. Defendant has infringed at least one claim of the '589 patent; 35 U.S.C. § 271.

19. Defendant has infringed at least one claim of the '703 patent; 35 U.S.C. § 271.

20. On March 5, 2004, counsel for Plaintiff directed a letter to Adam Allan, President of Defendant, enclosing copies of the '589 and '703 patents, and stating a demand that Defendant cease further sales of such mine roof bolts.

21. Defendant has nonetheless continued to make and sell the accused mine roof bolts.

22. Defendant has had actual knowledge of the '589 and '703 patents since at least March 5, 2004.

23. Defendant has had actual knowledge, since at least March 5, 2004, of Plaintiff's contention that Defendant's aforementioned mine roof bolt infringes the '589 and '703 patents.

24. Defendant has continued to infringe the '589 and '703 patents since Defendant received notice of Plaintiff's contention that Defendant's aforementioned mine roof bolt infringes such patents.

25. The acts of infringement by Defendant set forth above have been, and continue to be, in willful disregard of Plaintiff's exclusive patent rights.

26. Defendant has willfully infringed the '589 and '703 patents.

27. Plaintiff has been damaged by Defendant's acts of patent infringement.

Plaintiff requests the following relief:

1. An award of damages that will fully compensate Plaintiff for Defendant's acts of patent infringement described herein. 35 U.S.C. § 284.

2. An award of prejudgment interest on infringement damages accruing from the initial date of Defendant's receipt of notice by Plaintiff of Defendants' acts of infringement.

3. An award of treble damages for willful infringement by Defendant. 35 U.S.C. § 284.

4. An award of Plaintiff's attorneys fees and costs incurred in connection with this action. 35 U.S.C. § 284, 285.

5. An injunction prohibiting further acts of infringement by the Defendant during the remaining term of the '589 and '703 patents. 35 U.S.C. § 283.

6. Such other relief as the Court deems appropriate.

Plaintiff requests a trial by jury in accord with Rule 38 of the Federal Rules of Civil Procedure.

DATED this 7th day of September, 2004.

Respectfully submitted,

PRINCE, YEATES & GELDZAHLER



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Exhibits/
Attachments
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Please see the
case file.